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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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H6



FILE: [Redacted]

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: SEP 14 2010

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:  
[Redacted]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Tariq Syed*  
for

Perry Rhew  
Chief, Administrative Appeals Office

**ACTION REQUIRED**  
**APPROVAL PENDING**  
Initials: JT Date: 10/22/11  
FCO/Unit COW

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to a United States citizen and the mother of two United States citizen children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130) and an approved Petition for Alien Fiancé(e) (Form I-129F). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her United States citizen husband and children.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated December 10, 2007.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Service (USCIS) “erred in denying the I-601.” *Form I-290B*, filed December 26, 2007. Additionally, counsel claims that the applicant’s husband and children will suffer hardship if the applicant remains in Mexico.

The record includes, but is not limited to, counsel’s appeal brief, statements from the applicant’s husband, a letter from [redacted] regarding the applicant’s son’s medical condition, speech language evaluations on the applicant’s children, money transfer receipts, and phone bills. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

.....  
(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

.....  
(v) Waiver.-The Attorney General [now the Secretary of Homeland Security, “Secretary”] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of

admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record indicates that the applicant initially entered the United States in March 1998 without inspection. On March 6, 2007, the applicant voluntarily departed the United States. On March 28, 2007, the applicant filed a Form I-601. On December 10, 2007, the District Director denied the Form I-601, finding that the applicant had accrued more than a year of unlawful presence and had failed to demonstrate extreme hardship to her qualifying relative.

The applicant accrued unlawful presence from March 1998, the date she entered the United States without inspection, until March 6, 2007, when she departed the United States. The applicant is seeking admission into the United States within ten years of her March 6, 2007 departure. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (Board) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

Extreme hardship is “not a definable term of fixed and inflexible content or meaning,” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative’s family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative’s ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one’s present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm’r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be

considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; see also *U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The first prong of the analysis addresses hardship to the applicant’s spouse if he relocates to Mexico. The AAO acknowledges that the applicant’s husband is a native of Cuba and a citizen of the United States and that he may experience hardship in relocating to Mexico. However, the record does not establish that the applicant’s husband does not speak Spanish or that he has no family ties to Mexico. The AAO notes that the applicant’s husband is employed as a cabinet and crown molding installer, and the record fails to contain documentary evidence, e.g., country conditions reports on Mexico, that establishes that he would be unable to obtain employment upon relocation. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Additionally, the record also fails to indicate that the applicant’s husband has any medical condition, physical or mental, that would affect his ability to relocate.

In a letter dated April 21, 2007, the applicant's husband states his children are "physically sick and emotionally sick." In an undated statement, the applicant's husband states his son, [REDACTED] has a heart murmur, and his "heart condition requires special care." In a letter dated May 2, 2007, [REDACTED] diagnosed the applicant's son with a heart murmur. The AAO notes that [REDACTED] is treating the applicant's son in Mexico, and there is no indication that the treatment being received by him is sub-standard. The applicant's husband states his son's education is being delayed while he lives in Mexico. The AAO notes that the record establishes that the applicant's sons were evaluated for speech therapy in Michigan and were recommended to receive special education. However, the AAO notes that the record contains no country conditions reports that establish that conditions in Mexico are such that the applicant's children cannot attend school in Mexico or receive special education in Mexico.

While on July 16, 2010, the Department of State issued a travel warning to United States citizens thinking of traveling to Mexico, this warning is primarily focused on northern Mexico, i.e., along the United States-Mexico border. The record establishes that the applicant is residing in or near the Mexican state of Guanajuato.<sup>1</sup> Therefore, the AAO does not find the record to establish that the applicant's family would relocate to a part of Mexico where they would be subjected to violence. In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's husband would experience if he joined the applicant in Mexico, the AAO does not find the applicant to have established that her husband would suffer extreme hardship upon relocation.

In addition, the record does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. In a letter dated March 17, 2007, the applicant's husband states he has "become emotionally distressed and physically overwhelmed in [the applicant's] absence." The AAO notes that other than the applicant's husband's statement, the record does not contain evidence, such as an evaluation of his mental/emotional health, that establishes that his distress is beyond that experienced by others. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra.*

In a letter dated September 12, 2007, the applicant's husband states "[t]he financial cost in terms of the funds for going back and forth for [them] has been substantial (more than \$8000) to date, and is affecting their future plans." In counsel's appeal brief, filed February 8, 2008, counsel claims that the applicant's husband "needs to constantly travel back and forth to Mexico to see [the applicant] and [his] children and as such that affects his opportunity to find steady employment inasmuch as no employer will hire someone constantly absent from the job place." The applicant's husband states he recently purchased a horse farm and the applicant was supposed to take care of the farm, while he worked as a cabinet and crown molding installer. The AAO notes that the record does not establish that the applicant's husband cannot take care of the farm on his own or hire someone to help him. While the AAO notes the applicant's husband's claims of financial hardship, it does not find the record to support them. Other

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<sup>1</sup> The AAO notes that Dr. Verduzco Heredia, the applicant's son's doctor, is located in Guanajuato, Mexico.

than money transfer receipts, phone bills, and airfare receipts, the record contains no documentation that establishes the applicant's husband's income or expenses in the applicant's absence. The applicant's husband states his children are in Mexico with the applicant because he "would not have anyone to care for them while [he] [is] away at work." The AAO notes that the record fails to offer proof that the applicant's husband's employment would prevent him from caring for his children or that he would be unable to afford childcare to assist him in meeting his parental responsibilities. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra*. Additionally, the AAO notes that the applicant has submitted no evidence to establish that she is unable to obtain employment in Mexico and, thereby, reduce the financial burden on her husband.

The applicant's husband states his son needs "studies" performed for his heart condition and "it will be very hard to bring him by himself to the United States." He claims that the applicant needs to be with his son to "comfort him, pamper him, support him and love him." The AAO notes that the applicant's son may require additional medical testing. However, as noted above, there is no evidence in the record that the applicant's son cannot receive medical testing and/or treatment in Mexico. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.