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



U.S. Citizenship
and Immigration
Services



H6

SEP 20 2010

FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
[Redacted]

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:



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,

Aygun Sekka
for

Perry Rhew
Chief, Administrative Appeals Office

**ACTION COMPLETED
APPROVED FOR FILING**
Initials: JT Date: 6/22/11
FCO/Unit (OW)

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

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 for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated February 8, 2008.

On appeal, the applicant's husband asserts that he and his family will suffer extreme hardship if the applicant is not permitted to return to the United States. *Statement from the Applicant's Husband*, dated March 5, 2008.

The record contains statements from the applicant's husband, mother-in-law, and father-in-law, as well as medical documentation for the applicant's daughter, mother-in-law, and father-in-law. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

The record shows that the applicant entered the United States without inspection in or about May 2001, and she did not depart until approximately January 2007. Accordingly, she accrued over five years of unlawful presence. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant does not contest her inadmissibility on appeal.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

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-Morales*, 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 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.

In the present matter, the applicant’s husband states that he has been married to the applicant since May 23, 2000 and that they have three children. *Statement from the Applicant’s Husband* at 1. He explains that he and his wife lived with his parents beginning in 2001, and that the applicant has served as a caregiver for them. *Id.* He states that his parents are in their sixties and they have health problems. *Id.* He notes that when their children were born they moved to a residence one block away from his parents, yet the applicant continued to “keep an eye on [them]” and to be available should they need help or experience an emergency. *Id.*

The applicant’s husband provides that the applicant’s departure to Mexico marked the first time they have been apart. *Id.* at 2. He explains that he will have to bring his children back to the United States to resume their schooling if the applicant is not permitted to return. *Id.* He notes that his daughter, [REDACTED] has a medical condition, eczema, that requires treatment in the United States. *Id.* He indicates that he will have difficulty caring for his children and assisting his parents alone. *Id.* He

provides that he cannot earn sufficient income while caring for his children and watching his parents. *Id.*

The applicant's husband states that he is suffering emotionally due to separation from the applicant. *Id.* He provides that his children are affected by their family's situation, and that their hardship contributes to his own difficulty. *Id.* He indicates that he cannot have his children travel back and forth between the United States and Mexico, as he cannot afford it, and he does not wish to reside apart from them. *Id.* He states that his children will fall behind in school should they remain in Mexico for too long. *Id.* at 3.

The applicant's husband asserts that he cannot relocate to Mexico, as he cannot leave his parents in the United States. *Id.* at 2.

The applicant's husband asserts that he lost his previous job due to being in Mexico in attempt to resolve the applicant's immigration difficulties. *Id.* at 3. He states that he cannot rely on assistance from his parents because they are elderly, and his brothers have families of their own. *Id.*

The applicant's father-in-law states that he resided with his wife, the applicant, and the applicant's husband for about six month until December 2006. *Statement from the Applicant's Father-in-Law*, dated March 4, 2008. He explains that he is 66-years-old and he suffers from multiple health problems, including type II diabetes, osteoporosis, hypertension, severe chronic obstructive pulmonary disease, and mild congestive heart failure. *Id.* at 1. He states that he must use an oxygen mask all night and most of the day. *Id.* He provides that he takes medications and must monitor his blood sugar. *Id.* He adds that he has difficulty walking, and that he must use a walker. *Id.* at 2. He states that he could always count on the applicant to take care of him, and that she and her husband also resided with him and his wife for a year in 2001. *Id.* He indicates that his wife has anemia and diabetes, and that he cannot rely on her to assist him. *Id.* He states that he needs the applicant to return to the United States, as his Medicare benefits do not cover a nurse aid and he cannot afford one. *Id.*

The applicant's mother-in-law states that the applicant has assisted her and the applicant's father-in-law. *Statement from the Applicant's Mother-in-Law*, dated March 4, 2008. She provides that she is 65-years-old and that she suffers from pernicious anemia, hypertension, and diabetes. *Id.* at 1. She explains that she takes medications for her conditions. *Id.* at 2. She notes that the applicant's husband has struggled since the applicant departed the United States. *Id.* She indicates that she would like to assist the applicant's husband with baby-sitting, but that she does not feel suitable due to her health problems and medications she must take. *Id.* She adds that she is unable to hire someone to assist her and the applicant's father-in-law. *Id.*

The applicant submits a letter from her father-in-law's physician who confirms his conditions and attests that the applicant is one of her father-in-law's primary caregivers to assist him with his medical problems. *Letter from* [REDACTED] dated February 26, 2008. The applicant submits a letter from her mother-in-law's physician who confirms her conditions and indicates that

she would benefit from the applicant returning from Mexico to help take care of her. *Letter from* [REDACTED] [REDACTED] dated February 27, 2008.

The applicant provides medical documentation for her daughter, [REDACTED] that reflects that she has at different points in time suffered from diarrhea, pneumonia, severe eczema. *Medical Records for the Applicant's Daughter*, dated 2004 to 2006. An entry in the records states that her eczema is managed by a dermatologist and is "much improved." *Medical Record for the Applicant's Daughter*, dated February 8, 2005.

Upon review, the applicant has not shown that her husband will endure extreme hardship should the present waiver application be denied. The applicant has not established that her husband will endure extreme hardship should he remain in the United States for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant's husband indicated that he will endure hardship in part due to the need to act as a single parent for his three children should they reside with him in the United States. However, the applicant has not provided official documentation to show that she and her husband have children, such as their birth certificates. The lack of clear documentation of their children diminishes the weight given to the hardship the applicant's husband would experience related to them.

The applicant's husband indicated that the applicant's absence will cause financial hardship for him, largely due to the fact that his increased need to care for his children and parents interferes with his employment. However, the applicant has not provided financial documentation for her husband to show his income or expenses. Thus, the AAO is unable to determine whether her husband would have ample resources to hire childcare or nursing aid services as needed. The record does not establish that the applicant's husband would face the loss of his employment or significant financial difficulty in the applicant's absence.

The applicant presents documentation of her mother- and father-in-law's health problems. The AAO has examined their challenges to determine the impact they have on the applicant's husband. While it is evident that they require medical care and medication, the record is not clear regarding their capacity to care for themselves. It is evident that the applicant's father-in-law has mobility problems and serious health challenges, yet the record does not establish that he is unable to receive assistance from the applicant's mother-in-law with whom he resides. The applicant's family members attested that she and her husband resided with her mother- and father-in-law during two periods, for approximately one year and six months, and that she assisted them. However, although the applicant's family members indicate that she and her husband moved one block away, they ceased residing together which suggests that her mother- and father-in-law do not require constant supervision. Further, the applicant's father-in-law's physician stated that the applicant is one of her father-in-law's caregivers, indicating that one or more other individuals, presumably including the applicant's husband, provide care for her father-in-law. The applicant's mother-in-law's physician stated that she would benefit from the applicant's presence, but he did not state that her mother-in-law relies on care from the applicant or any other individual. The applicant's husband indicated that

he has brothers in the United States who also have families, and the applicant has not provided an indication regarding whether they are willing or able to assist their parents if needed.

Thus, the applicant has not shown that her mother- or father-in-law will lack required care in her absence, or that such situation will result in significant additional hardship for her husband.

The applicant's husband states that his daughter, Sara, has eczema for which she requires treatment in the United States. The medical documentation in the record supports that she has suffered from severe eczema for which she has been prescribed a course of treatment. However, the documentation reflects that her condition is much improved with the care of a dermatologist. The applicant has not shown that her daughter would lack access to treatment for eczema in Mexico, or that she would fail to receive treatment should she reside with the applicant's husband in the United States.

The applicant's husband expresses that he will face difficulty balancing his parental and professional responsibilities while caring for his parents. He indicates that he will endure emotional hardship as a result. The applicant has provided detailed explanation of the tasks she performed in the United States for her children and family, and it is evident that her husband faces challenging circumstances in meeting the needs of his children while assisting his parents and engaging in employment. The AAO acknowledges that acting as a single parent for three young children and caring for elderly parents often creates significant physical and emotional challenges. It is further evident that young children often experience significant emotional difficulty when separated from a parent, and that such hardship has an impact on the children's parents. However, after careful examination of the explanation and evidence in the record, the AAO is unable to find that the applicant has distinguished her husband's circumstances from those often created for a spouse when an individual relocates abroad due to inadmissibility.

All elements of hardship to the applicant's husband have been considered in aggregate. The applicant has not shown that, should her husband remain in the United States for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, he will endure extreme hardship.

The applicant has provided sufficient explanation and documentation to show that her husband will endure extreme hardship should he relocate to Mexico. The applicant's husband asserts that he cannot relocate to Mexico, as he cannot leave his parents in the United States. The medical documentation for the applicant's father-in-law shows that he suffers from serious illnesses. It is evident that he has established relationships with medical professionals and health service providers in the United States, including physician care, oxygen distribution, and medical benefits. The record shows by a preponderance of the evidence that the continuity of his required care would be disrupted should he relocate to Mexico with the applicant's husband, which would create substantial hardship for him and the applicant's husband.

The statements in the record show that the applicant's husband shares a close relationship with his parents and that their lives are integrated. Now residing apart from his parents, particularly when his

father has serious health problems, constitutes an unusual circumstance not ordinarily faced when an individual relocates abroad due to the inadmissibility of a spouse.

The applicant's husband would face other elements of hardship should he depart the United States, including separation from his community and employment, the expense of relocation, and the emotional hardship of lacking the ability to raise and educate his children in the United States. These difficulties are common consequences of relocating due to inadmissibility. Yet, combined with separation from his parents with health problems, the aggregate of the applicant's husband's challenges rise to an extreme level.

Accordingly, the applicant has established that her husband will face extreme hardship should he join her in Mexico to maintain family unity.

However, as discussed above, as the applicant has not shown that her husband will suffer extreme hardship should he remain in the United States, she has not established that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver under section 212(a)(9)(B)(v) of the Act. 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 the present matter, the applicant has not met her burden to prove that she is eligible for a waiver under section 212(a)(9)(B) of the Act. *See* Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.