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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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[Redacted]

FILE:

[Redacted]

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date:

SEP 28 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.

Thank you,

*Tariq Syed*  
*for*

Perry Rhew  
Chief, Administrative Appeals Office

ACTION COMPLETED  
APPROPRIATE RELING  
Initials: JT Date: 6/22/11  
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 sustained.

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 a United States citizen child. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 son.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 30, 2008.

On appeal, the applicant, through counsel, contends that the issue of extreme hardship to the applicant's husband "was not properly documented or reviewed, nor were there any attempts to obtain further information proving such hardship." *Form I-290B*, filed February 28, 2008. Additionally, counsel claims that the applicant's husband "is a United States Citizen, he works 2 jobs and had [sic] a teenage son to take care of." *Id.*

The record includes, but is not limited to, statements from the applicant's husband and son; letters of support for the applicant and her husband; a letter from [REDACTED] regarding the applicant's husband's mental health; a letter from [REDACTED] regarding the applicant's husband's home for sale; school documents for the applicant's son; wage statements, a social security statement, and utility bills for a residence in Tijuana; articles on Tijuana violence, crime in Mexico, and living conditions in Mexico; and country specific information on Mexico. 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 entered the United States in September 2004 without inspection. On February 21, 2007, the applicant voluntarily departed the United States.

The applicant accrued unlawful presence from September 2004, when she entered the United States without inspection, until February 21, 2007, when she departed the United States. The applicant is seeking admission into the United States within ten years of her February 21, 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 son 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 the United States Citizenship and Immigration Service (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 (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.

In an undated affidavit, the applicant’s husband states “[t]he thought of [him] giving up [his] American dream to move [his] family permanently to Mexico scares [him].” The AAO acknowledges that although the applicant’s husband is a native of Mexico, he has resided in the United States for many years. The applicant’s husband states the applicant resides in Tijuana, so he and his son can visit her on the weekends. He claims “[t]he crime, violence and lack of prosperity [in Tijuana] would be a nightmare.” The AAO notes that the record contains utility bills in the applicant’s husband’s name for a residence in Tijuana. The applicant’s husband claims that they “do not have money for a nice house [in Tijuana], and the doors, windows and locks are not that good.”

The AAO notes that on September 10, 2010, the Department of State issued a travel warning to United States citizens thinking of traveling to Mexico, which focuses on northern Mexico, i.e., along the United States-Mexico border. The record establishes that the applicant is residing in the northern border city of Tijuana, in the Mexican state of Baja California. The travel warning clearly states that “[m]uch of the country’s narcotics-related violence has occurred in the northern border region” and “[m]ore than half of all Americans killed in Mexico in FY 2009 whose deaths were reported to the U.S. Embassy were killed in the border cities of Ciudad Juarez and Tijuana.” The travel warning also states “[t]he situation in northern Mexico remains fluid; the location and timing of future armed engagements cannot be predicted. U.S. citizens are urged to exercise extreme caution when traveling throughout the region, particularly in those areas specifically mentioned in this Travel Warning.”

The applicant’s husband states his “son does not have the Spanish language skills necessary to attend school successfully in Mexico.” Based on the applicant’s spouse’s lack of ties to Mexico, his son’s lack of Spanish language skills which will affect his ability to succeed in the Mexican school system, and the increased violence in northern Mexico and travel warning issued to United States citizens, the AAO finds that the applicant’s husband would suffer extreme hardship if he were to relocate to Mexico to be with the applicant.

Regarding the hardship the applicant’s husband would suffer if he were to remain in the United States without the applicant, the applicant’s husband states he “live[s] in a world of pain, a dark, dark world where [he] [does] not want to face the day, [he] [does] not know how [he] [is] going to get out of bed, take care of [his] son and make it through the day.” In an undated statement, the applicant’s son states his father is “very sad because [the applicant] is [in] Mexico.” The applicant’s husband states they “constantly fear for [the applicant’s] safety in Tijuana,” “[t]he violence keeps getting worse and worse,” and he has “nightmares of someone taking [the applicant] away.” In a letter dated February 20, 2008, [REDACTED] states the applicant’s husband is suffering from depression, and his symptoms include “sleeplessness, feelings of guilt, loss of appetite, tearfulness, headaches, nightmares,” and difficulty getting out of bed and going to work. [REDACTED] states that she is concerned that the applicant’s husband “may become too overwhelmed to maintain his work and parenting duties.”

The applicant’s husband states he works “so many hours in a day that [he] hardly see[s] [his] son.” The applicant’s son states his father works all day, then “he works doing the yards for old people,” and “when he gets home he has to do the house work” and he is too tired to help him with schoolwork. [REDACTED] states the applicant’s husband is worried about his son’s sadness. The applicant’s son states that when he sees his father sad, he becomes sad too. In a statement dated March 17, 2007, the applicant’s husband states his son “has experienced significant weight loss.” The AAO acknowledges that the applicant’s son is suffering some hardship through his separation from the applicant and having to care for himself while his father works long hours.

The applicant’s husband states that not only is he suffering emotionally, he is “drowning economically.” He states that he is supporting the applicant in Mexico and his family in the United States. The AAO notes that the record establishes some of the applicant’s husband’s expenses, including some utility bills from the residence in Tijuana. The applicant’s husband states “the home [they] bought is up for sale because [he]

[cannot] afford to pay both the mortgage and support [the applicant] in Mexico.” The AAO notes that the record establishes that the applicant’s husband listed his home for sale.

Considering the applicant’s spouse’s mental health issues, concern for the applicant’s safety in Tijuana, financial issues, son’s emotional issues, raising his son without the applicant, and the normal effects of separation, the AAO finds the record to establish that the applicant’s husband would face extreme hardship if he remained in the United States in her absence.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant’s entry into the United States without inspection and period of unlawful presence. The favorable and mitigating factors are the applicant’s United States citizen husband and son, the extreme hardship to her husband if she were refused admission, the absence of a criminal record, and the letters of support.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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 met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained. The waiver application is approved.