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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
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U.S. Citizenship
and Immigration
Services



H6

FILE: [REDACTED] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date:
CDJ 2006 625 238

APR 04 2011

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Ground 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:



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 \$630. 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting 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 34-year-old 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 his last departure from the United States. The applicant is married to a United States citizen (USC) and 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 his USC spouse.

The acting district director found that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated April 15, 2008. On appeal, counsel asserts that the director erroneously concluded that the evidence submitted was insufficient to establish extreme hardship. *See Form I-290B, Notice of Appeal*, dated May 5, 2008.

The record includes, but is not limited to, a statement from the applicant's spouse, a supportive statement from [REDACTED] the applicant's spouse's mother, a brief from counsel in support of the appeal, copies of medical reports from Accident & Back Pain Clinic, Arvada, Colorado, relating to injuries sustained by the applicant's spouse in a motor vehicle accident on May 19, 2008, a copy of a "Return to Work/School Treatment Verification" from [REDACTED] Office, regarding the applicant's spouse, copies of residential lease agreements, copies of bank statements, individual income tax returns, W-2 Wage and Tax Statements for the applicant's spouse, copies of bills and a copy of a report on health care in Mexico. The entire record was reviewed and considered in rendering this decision on 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.

.....

(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 applicant claims that he entered the United States without being inspected and admitted or paroled in April 1995. On January 27, 2006, the applicant's United States citizen spouse filed a Form I-130 on the applicant's behalf, which was approved on April 22, 2006. In August 2007, the applicant voluntarily departed the United States. On August 2, 2007, the applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act by a United States Consular Officer in Ciudad Juarez, Mexico. On August 17, 2007, the applicant filed a Form I-601 waiver. On April 15, 2008, the acting district director denied the Form I-601, finding that the applicant failed to establish extreme hardship to a qualifying relative. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence law under the Act, until August 2007, when he voluntarily departed the United States. The applicant's unlawful presence for more than one year and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. Thus, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 this case, the record reflects that the applicant’s spouse, [REDACTED] is a 39-year-old native of Mexico and citizen of the United States. The applicant and his spouse were married in Denver, Colorado, on January 17, 2006, and they do not have any children together. The applicant’s spouse states that she is suffering extreme emotional and financial hardship as a result of family separation and the denial of the applicant’s waiver request.

Regarding the emotional and financial hardship of separation, the applicant's spouse states "It has been determined that I am clinically depressed and suffer from chronic depression. I have been taking medication and had been doing very well and feeling great with the help, love and attention of [the applicant]. I fear that without [the applicant] by my side my depression will return and I am now starting to feel the symptoms of depression again." See *Statement by Baciliza Ibuado-Verdin*, dated August 9, 2007. The applicant's spouse also states that without the applicant's income and health insurance, she cannot afford to pay for medical insurance and receive her medications and/or continue under a physician's care. *Id.* The applicant's spouse further states that although she is employed and can afford to pay for basic living expenses, she cannot continue to pay for medical needs or other basic and extraordinary needs without the applicant's help. *Id.* Counsel asserts that the applicant earns half of the family's income, but that besides the financial toll on the family resulting from the applicant's departure, they will incur a heavy emotional burden, and that continued denial of the applicant's admission into the United States would cause the family to experience separation anxiety. See *Counsel's Brief in Support of Appeal*, dated May 29, 2008. Counsel also asserts that the applicant's spouse's mother has experienced distress over the applicant's absence, which has resulted in additional hardship to the applicant's spouse. *Id.* Counsel also states that the applicant's spouse may have to secure another source of income for the family, such as working a second job to compensate for the loss of the applicant's income, and that would exasperate her feelings of depression. *Id.* Counsel further asserts that the loss of the applicant as a wage earner and helper with his spouse's mother would place a monumental burden on his spouse to fill "the income and helper gap" created by the applicant's absence from the United States. *Id.*

The AAO acknowledges that separation from the applicant may have caused some challenges to the applicant's spouse, however, the evidence in this record is insufficient to demonstrate that the challenges the applicant's spouse encounters, meet the extreme hardship standard. The brief statement from [REDACTED] states that the applicant's spouse has been diagnosed with depression, and she indicates that this may explain her recent difficulties and recommends that she be re-evaluated in one month. This statement is not accompanied by medical records or other documentation to support the diagnosis; it does not provide detailed assessment of the severity of the applicant's spouse's condition, or information on the treatment or any family assistance needed. Without such details, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or treatment needed. Additionally, the applicant does not provide medical records, detailed testimony, or other evidence to demonstrate that the applicant's spouse is suffering from emotional or psychological hardship or to demonstrate that any emotional or psychological hardships his spouse faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility.

Regarding the financial hardship of separation, while the applicant's spouse claims that she has been suffering financial hardship as a result of separation from the applicant, the record does not contain information to support such claim. Counsel claims that the applicant earns half of the family's income and if he does not return to the United States to resume his employment, he may not be able to earn enough in Mexico to support himself, let alone contribute to the support of his spouse in the United States. The record contains information about the applicant's wife's income and some of the family's expenditures; however, the record does not contain information on the applicant's income, or evidence that the applicant has previously provided his spouse with any financial assistance.

Absent the information on the family's income and detailed expenses, the AAO cannot conclude that family separation has caused extreme financial hardship to the applicant's spouse. 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)). Therefore, the AAO finds that the applicant has failed to establish that the challenges his spouse faces rise to the level of extreme hardship.

Regarding relocation, the applicant's spouse states that she cannot relocate to Mexico to be with the applicant for the following reasons: she spends summers and vacations from school with her daughter from a previous marriage, her ex-spouse would not allow her to take their daughter to Mexico, she has to pay court ordered child support for her daughter, and is providing physical care, financial support, shelter and living expenses for her elderly and disabled mother. *Statement by* [REDACTED] dated August 9, 2007. The applicant's spouse also states, "if I would have to abandon my home here, I would leave my dependents without basic living expenses and my elderly mother without physical care. *Id.* The applicant's spouse also states that Mexico has a high unemployment and crime rate, and that living in Mexico would cause her to feel "anxiety and paranoia." *Id.* The AAO notes that given the applicant's spouse's significant family ties in the United States that would be severely impacted upon her relocation to Mexico, her long-term residence and employment in the country and her concern for her health and safety in Mexico, the applicant has demonstrated the relocation to Mexico would result in extreme hardship to his spouse.

In sum, although the applicant's spouse has demonstrated that she would suffer extreme hardship if she were to relocate to Mexico, the evidence in the record does not support a finding that the difficulties she faces due to family separation, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

The record shows that the applicant has been convicted of driving under the influence of alcohol (DUI). The acting district director did not address whether or not this conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

ORDER: The appeal is dismissed.