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



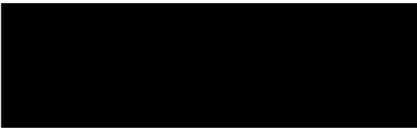
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FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **FEB 16 2011**

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 (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and Section 212(i) of the Act, 8 U.S.C. § 1182(i)

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 District Director, Mexico City. The matter 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 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 section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a U.S. citizen and 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), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the District Director*, dated September 6, 2007.

On appeal, counsel contends that the applicant entered the United States without inspection and is inadmissible for unlawful presence. Counsel contends the applicant established the requisite hardship. Specifically, counsel contends the couple has a U.S. citizen child and a child who is a lawful permanent resident, that the applicant has no criminal record, and that the applicant's U.S. citizen spouse would suffer extreme hardship if he moved to Mexico to be with his wife.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on March 21, 2001; a copy of the birth certificate of the couple's U.S. citizen son; a copy of the birth certificate of the couple's son who was born in Mexico; a letter from [REDACTED] a psychological evaluation of [REDACTED] letters of support; a letter from [REDACTED] employer; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Mexico and other background materials; a letter from the couple's child's physician; a letter from [REDACTED] roommate; copies of [REDACTED] bank statements and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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 Attorney General [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.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, counsel does not address the district director's finding of inadmissibility based on willful misrepresentation of a material fact. The record contains notes from the U.S. consulate in Ciudad Juarez that state that the applicant claimed she entered the United States in April 2002 using an "imposter visa" and remained until her departure in May 2003. The applicant filed a waiver application stating that she "lived illegally in US from Apr 2002 to May 2003[.] Gained entry with a imposter visa." Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit.

To the extent counsel states that the applicant entered the United States without inspection, *Appeal Brief* at 1-2, the Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such

person to establish that he is eligible to receive such visa or such document . . .”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In this case, there is no statement from the applicant asserting that she did not attempt to enter the United States using a fraudulent visa or that she entered the country without inspection. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Absent any evidence to the contrary, and based on the consular notes in the record, the AAO finds that the applicant did not enter the United States without inspection, but rather, using a fraudulent visa. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit.

Moreover, the record shows, and counsel concedes, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for a period of one year or more. *Appeal Brief* at 1, 2; *Biographic Information form (Form G-325A)*, dated January 31, 2006 (indicating the applicant lived in the United States from March 2002 until May 2003).

A waiver of inadmissibility under sections 212(i) and 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 this case, the applicant's husband, [REDACTED] states that he was born in Mexico and moved to the United States when he was twenty years old. He states he met the applicant when he was twenty-eight years old during a visit to Mexico. He states they moved in together and he was working in the village, but was barely making enough money to pay the rent and feed themselves. [REDACTED] contends he decided to go back to the United States to work and he sent money back to his wife and their son, [REDACTED]. [REDACTED] states that after three years of going back and forth between Mexico and the United States, he and his wife decided that she and their son had to come to the United States. According to [REDACTED], in July 2002, his wife and their three-year old son crossed the border in El Paso, Texas, in a desperate decision to be together. He states that after his wife gave birth to their second child, in May 2003, after ten months of being in the United States, his wife and sons flew back to Mexico.¹ [REDACTED] states he has had to seek the help of a psychologist because of his emotional instability as he cannot concentrate and thinks about his family being apart every second. In addition, [REDACTED] states it has been very difficult to support his family in Mexico as well as meet his own living expenses in the United States. [REDACTED] also states that he has decided to take classes in the field of air conditioning systems, but needs to have the peace of mind that he can afford these classes. Furthermore, [REDACTED] contends he cannot move to Mexico to be with his family because it will be difficult for him to find a job that pays enough for him to send his children to school and he can provide for his family better by working in the United States. He states that the jobs in Tierra Blanca, Zacatecas, are in agriculture, that there is "hardly anything there to live off of" there, and that he does not know how people survive there. He states the schools in Mexico do not compare to the schools in the United States. He contends there is no hospital nearby, no stores, and that some communities still have dirt roads and drainage systems close to the villages. Furthermore, [REDACTED] states he works twelve to fourteen hours per day and would be unable to afford daycare if his two sons returned to the United States without their mother. He contends her earns approximately \$2,200 per month, that his monthly expenses are approximately \$1,200 to \$1,300 per month, and that he sends his family \$1,200 per month. *Letter from [REDACTED] [REDACTED], dated November 1, 2007.*²

A psychological evaluation of [REDACTED] states that [REDACTED] and his two sons are physically healthy and have no mental health or substance abuse problems. The social worker states that [REDACTED] was born in Mexico, speaks some English, and came to the United States in an effort to escape poverty in Mexico. According to the social worker, [REDACTED] situation is very stressful because he has been

¹ Although [REDACTED] contends his wife was in the United States for ten months, as discussed above, the record shows she was unlawfully present in the United States for more than one year. *Appeal Brief, supra; Biographic Information form (Form G-325A), supra.*

² The record contains another letter from [REDACTED] dated February 17, 2006. This letter is written in Spanish and has not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Consequently, this letter cannot be considered.

traveling back and forth to Mexico approximately every two months in order to see his wife and children. ██████ reported having difficulty sleeping, difficulty with concentration, irritability, decreased energy, decreased appetite, and a decreased ability to enjoy activities. The social worker states that the family is dysfunctional because ██████ is only able to visit his family sporadically. According to the social worker, children who are separated from a parent develop low self-esteem later in life and are predisposed to acting out, addiction, depression, and other mental health problems. The social worker concludes that ██████ suffers from adjustment disorder with depressed mood. *Letter from ██████ dated October 29, 2007.*

A letter from a physician in Mexico states that the couple's child, ██████, was seen in May 2007 due to ocular allergies and that he was treated with prescriptions. According to the physician, "[t]his type of ailment is related to the client's own psychological well being and other elements of his surroundings like: dust, pollen, sun and other factors." The physician states this type of illness tends to get better towards the ages of twelve and thirteen. *Letter from ██████ dated October 2, 2007.*

The record also contains several letters from individuals in Mexico describing the village in Mexico where the applicant lives as having only seasonal agricultural jobs. *See, e.g., Letter from ██████ dated October 8, 2007* (letter from the president of the Loreto chamber of commerce stating that there is no source of employment in Loreto except for agriculture and that most of the residents work in other Mexican cities or overseas); *Letter from ██████, dated October 30, 2007* (letter from the municipal president of Loreto stating that most of the residents of Tierra Blanca live off the land and that there are no employment sources where people can earn a steady income).

After a careful review of the record, there is insufficient evidence to show that the applicant's husband has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO finds that if ██████ had to move back to Mexico to be with his wife, he would experience extreme hardship. ██████ would need to readjust to a new life in Mexico after having lived in the United States for more than twenty years, since he was twenty years old. In addition, according to ██████ he has already attempted to live and raise his family in Tierra Blanca, Loreto, but was barely able to pay the rent and feed his family. Letters in the record substantiate his contention that the economic situation in Tierra Blanca is very depressed, that there is no source of employment other than seasonal agricultural work, and that he would have much difficulty finding employment there. If ██████ were to move back to Mexico, he would need to give up his job that pays him approximately \$2,200 per month and he would lose the opportunity to take the classes he planned on taking to advance his education and his career. Considering all of these unique factors cumulatively, the AAO finds that if ██████ had to move back to Mexico, the hardship he would experience is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, ██████ has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. ██████ contentions that he misses his family and wants to provide a good life for his sons in the United

States are difficulties that are typical of individuals separated as a result of deportation or exclusion and do not rise to the level of extreme hardship based on the record. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported).

Regarding the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record is based on one interview the social worker conducted with [REDACTED] on October 26, 2007. *Letter from [REDACTED] supra*. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. Although [REDACTED] contends he has "had to resort to seek the help of a psychologist," *Letter from [REDACTED] supra*, there is no evidence he is receiving ongoing counseling or mental health treatment. In addition, the evaluation acknowledges that although [REDACTED] suffers from adjustment disorder with depressed mood, he is physically healthy and has no other mental health problems or substance abuse problems. *Id.* In sum, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby diminishing the evaluation's value to a determination of extreme hardship.

Regarding the financial hardship claim, there is insufficient evidence showing that [REDACTED] hardship is extreme. According to [REDACTED] he earns approximately \$2,200 per month and sends an average of \$1,200 per month to his wife and children in Mexico. *Letter from [REDACTED] supra*. However, there are no tax documents in the record indicating [REDACTED] annual wages for any year. There is no evidence [REDACTED] is behind in paying any of his bills, and although a copy of his checking account statement shows that the lowest balance in his checking account was only \$7.11, the same statement shows that his highest balance was \$6,030.17. Although the AAO does not doubt that supporting his wife and children in Mexico causes some financial hardship to [REDACTED] without more detailed information addressing [REDACTED] income and expenses, there is insufficient evidence in the record to determine the extent of his financial problems.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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, 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.