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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

HL6

[REDACTED]

FILE: [REDACTED]

Office: PHOENIX, AZ

Date:

**FEB 18 2011**

IN RE: [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. section 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew", with a long horizontal flourish extending to the right.

Perry Rhew  
Chief, Administrative Appeals Office

[REDACTED]

**DISCUSSION:** The waiver application was denied by the District Director, Phoenix, Arizona. 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. He 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 one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He 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).

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 15, 2008.

On appeal, counsel for the applicant states that removing the applicant would result in extreme hardship to the applicant's spouse beyond the common impacts of relocation or separation. *Form I-290B*, received on September 18, 2008.

The record includes, but is not limited to, counsel's brief; statements from the applicant and his spouse; statements from the applicant's in-laws and other family members; a Verification of Pregnancy, by [REDACTED] dated May 16, 2008; employment letters, pay stubs and statements from the applicant's employer; an employment letter and statement from the applicant's spouse's employer; copies of a car title and mortgage interest statement; a copy of a residential mortgage statement; tax returns, bank statements and other financial documents pertaining to the applicant and his spouse; copies of utility bills and service invoices; country conditions materials on unemployment and violent crime Mexico; a psychological evaluation of the applicant's spouse by [REDACTED]; and photographs of the applicant, his spouse and their family.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

(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 indicates that the applicant entered the United States without inspection in June 1997 and remained until he departed voluntarily in November 2002. The applicant re-entered the United States under an H-2B visa on November 18, 2003. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 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.

The AAO will first examine hardship upon relocation. On appeal counsel asserts that the applicant’s spouse will experience extreme hardship if she relocates to Mexico. *Brief in Support of Appeal*, received October 3, 2008. He states that the applicant’s spouse was born and raised in the United States, that her entire family is in the United States and that she has no family ties in Mexico and no employment prospects.

The applicant's spouse has submitted a statement re-iterating counsel's assertions, and also explaining that she does not speak or write Spanish very well. *Statement of the applicant's spouse*, dated May 20, 2008. She also asserts that she would have problems supporting herself and her newborn baby in Mexico, and that they would not have access to the level of healthcare available in the United States, noting that the applicant lives in a rural area. She also asserts that the skills she has developed in the United States would be useless in Mexico, and that it would be an extreme hardship to relocate from their peaceful Phoenix neighborhood to Mexico where drug and political violence occur with frequency.

Statements from the applicant's spouse's mother and sisters assert that the applicant's spouse would not be able to cope with the environment in Mexico and is not familiar with its culture. They also express anxiety regarding the dangerous atmosphere in Mexico where the applicant's spouse and her newborn child would have to relocate.

Evidence in the record includes a statement from the applicant's spouse's employer explaining that if the applicant's spouse relocated to Mexico with the applicant it would devastate their company. *Statement of [REDACTED]*, May 15, 2008.

The record contains country conditions materials, including the [REDACTED] section on Mexico, a periodical on growing unemployment in Mexico, a periodical discussing the kidnappings and other violence in Mexico and the U.S. State Department Travel Warning for Mexico, most recently issued on September 10, 2010. The testimony in the record and statements from her employer and church also establishes her community ties to the United States.

The AAO notes, however, that the record does not contain a birth certificate or other evidence confirming that the applicant's spouse has had a child. As such, any assertions of hardship to the applicant's child, and its potential impact on the applicant's spouse, bear little weight in these proceedings.

Although the country conditions materials submitted do not establish that the applicant or her spouse would be unable to find employment, they do establish the dangerous atmosphere in Mexico.

When the hardship factors upon relocation are examined in the aggregate they do not establish that the applicant's spouse would experience hardships which rise above the common impacts associated with relocation abroad with an inadmissible family member. As such, the applicant has failed to establish extreme hardship upon relocation.

With regard to hardship upon separation, counsel asserts on appeal that the applicant's spouse would experience financial, physical and emotional hardship if the applicant were removed. *Brief in support of appeal*, received October 3, 2008. Counsel asserts the applicant was the primary source of income for his spouse and that his removal would result in the loss of their home and vehicle because his spouse does not earn enough to pay their bills.

The applicant's spouse has submitted a letter asserting that she will experience financial hardship if the applicant is removed because she would not be able to support herself and her newborn baby if he were removed. She notes that she has already had to work overtime in order to pay the legal bills associated with the applicant's status. She also asserts that she will experience extreme emotional hardship.

As noted above, the record does not contain any documentation verifying the birth of a child, as such, any hardships to the applicant's spouse based on having to care for a newborn child may not be considered.

The record includes probative evidence on the applicant's income, establishing that he provided the primary source of income for their family. However, the record also establishes that the applicant's spouse is employed at an approximate rate of \$23,920 a year. *Statement of* [REDACTED] [REDACTED] August 30, 2006. The car title submitted indicates that the applicant is the owner and that no lien exists on the car. There is a mortgage statement establishing a monthly obligation of \$928 per month and utility bills and service invoices establishing other financial obligations. This evidence is sufficient to establish that there will be some financial impact of departure, but it is not sufficient to in itself to establish extreme hardship.

The record contains letters from family members attesting to the emotional impact on the applicant's spouse. The record also contains a psychological evaluation of the applicant's spouse by [REDACTED] [REDACTED] dated February 21, 2006. In his evaluation [REDACTED] notes the applicant's spouse has gained weight, has trouble sleeping and suffers from suicidal ideation. He diagnoses the applicant's spouse with Major Depressive Disorder. The record also contains letters from the applicant's sisters which attest to the emotional hardship the applicant's spouse would experience if the applicant were removed. The applicant's spouse's mother echoes these concerns, and asserts that the having to separate from the applicant will result in depression and weaken her immune system, impacting her physically. *Statement of* [REDACTED] May 15, 2008.

Even when these hardship factors are considered in the aggregate they fail to establish that the applicant's spouse would experience uncommon impacts which rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act,

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8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.