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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
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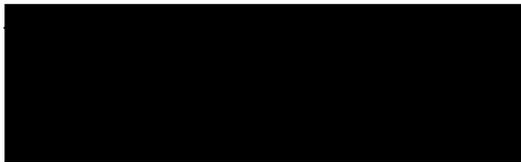
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$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 applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated July 17, 2008.

On appeal, counsel for the applicant asserts that the applicant's husband and father will face significant hardship should the applicant be prohibited from residing in the United States. *Brief from Counsel*, dated August 15, 2008

The record contains a brief from counsel; a psychological evaluation of the applicant's husband; statements from the applicant's husband and father; photographs of the applicant and her family; copies of birth certificates for the applicant's relatives, and; documentation regarding the applicant's father's cataract surgery. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record shows that the applicant entered the United States without inspection in or about February 2003, and remained until approximately August 2007. Accordingly, she accrued over four years of unlawful presence in the United States. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been

unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant does not contest her inadmissibility on appeal.

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

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband and father are the only qualifying relatives 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-Moralez*, 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 applicant's husband states that he married the applicant on April 3, 2005, and that they have no children together. *Statement from the Applicant's Husband*, dated August 19, 2008. He notes that he resides with his sister, and that he has two adult children who no longer live with him. *Id.* at 1. He provides that he is experiencing various medical and psychological problems, and that his attorney referred him to a psychologist. *Id.* He explains that he used to spend every moment he could with the applicant, his children, and his family, yet since the applicant departed for Mexico he has been sad and withdrawn. *Id.* He expresses that he wishes for the applicant to return to the United States to help him through his depression, as he is getting worse each day. *Id.* He states that his work performance has deteriorated, and that his high blood pressure is growing worse due to his poor mental health. *Id.* He adds that he has difficulty breathing and pain on his left side, yet he does not have the motivation to seek medical help. *Id.* He notes that his children and siblings try to help him cope with his depression, but that they are unsuccessful. *Id.*

The applicant's husband previously described the history of his relationship with the applicant, and he expressed that he does not wish to be separated from her. *Prior Statement from the Applicant's Husband*, dated August 22, 2007. He indicated that he is unable to get used to living in Mexico, as he has been residing in the United States for a very long time and working hard to reach his goals. *Id.* at 1-2. He provided that he is close with his family in the United States. *Id.* at 2. He stated that economic conditions are poor in Mexico and he would be unable to pay for his food and rent. *Id.* The applicant's husband added that all of the applicant's family are in the United States, and that three of her siblings were born in the United States and one became a citizen by naturalization. *Id.* He stated that the applicant's father is a lawful permanent resident and that he is under the care of the applicant and of all of her siblings. *Id.* He explained that the applicant's father had cataract surgery on August 20, 2007, and the applicant's siblings take turns caring for him. *Id.*

The applicant's father asserts that he resides legally in Anaheim, California. *Statement from the Applicant's Father*, dated August 8, 2008. He asserts that denial of the applicant's waiver application has affected him very deeply, as he is sick and needs the applicant with his family. *Id.* at 1. He contends that all of his family resides legally in the United States. *Id.* He expresses concern for the level of crime in Mexico, and he states that he is tormented by the applicant's exposure to such risk there. *Id.* He adds that he has witnessed the applicant's husband's suffering. *Id.*

Counsel states that the applicant is residing with relatives in Mexico, and that they are having difficulty accommodating her. *Brief from Counsel*, dated August 15, 2008. Counsel asserts that the applicant's husband is going through a series of physical and psychological problems due to the applicant's absence. *Id.* at 2. Counsel contends that the applicant's husband has had to work longer hours to support the applicant, and that he had to depart the home in which they lived together. *Id.* at 3.

The applicant submits a psychological evaluation of her husband, conducted by a licensed marriage and family therapist, [REDACTED] indicates that her report was based on an in person interview and over two hours of psychological testing of the applicant's husband. *Report from [REDACTED]* August 13, 2008. [REDACTED] describes the applicant's husband's history, and notes that he has extensive family in the United States with whom he is close. *Id.* at 2. [REDACTED] indicates that the applicant's husband is significantly impacted by separation from the applicant, and that he can be diagnosed as Major Depressive Disorder (DSM-IV 296.2, with Melancholic Features, Severe.) *Id.* at 6. [REDACTED] further comments that the applicant's husband exhibits features of Anxiety Disorder. *Id.* [REDACTED] notes that the applicant and her husband have major family support systems in the United States. *Id.* [REDACTED] provides that the applicant's husband requires medical and psychotherapeutic interventions. *Id.* at 7.

Upon review, the applicant has not shown that a qualifying relative will suffer extreme hardship should the present waiver application be denied. The applicant has not established that her father will suffer extreme hardship should he remain in the United States without her. The record shows that the applicant's father received cataract surgery, yet the applicant has not submitted any other

medical documentation to support that he requires significant assistance. Further, the applicant's husband indicated that the applicant's siblings participate in the care of her father, thus it is evident that he will continue to have assistance from his children should the applicant reside outside the United States. The AAO acknowledges that the separation of parents and children often results in significant emotional difficulty, and that the applicant's father expressed that he wishes to remain close to the applicant and the United States. However, the applicant has not distinguished her father's psychological difficulty from that which is often expected when a parent resides apart from a daughter due to inadmissibility. The applicant has not shown that her father relies on her for economic support.

The applicant's father expressed his concern for conditions in Mexico, including crime. However, the applicant has not presented explanation or documentation to support that her father would suffer hardships should he join her in Mexico. In the absence of clear assertions from the applicant, the AAO may not speculate regarding hardships that the applicant's relatives may experience. In proceedings regarding a 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.

Based on the foregoing, the applicant has not established that her father will suffer extreme hardship should the present waiver application be denied, whether he remains in the United States or relocates to Mexico.

The applicant has not shown that her husband will face extreme hardship should he remain in the United States for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant has not presented any information or documentation to show that her husband would endure economic difficulty should she reside in Mexico.

The applicant's husband indicated that he has experienced difficulty breathing, pain in his side, and high blood pressure, yet the applicant has not provided any medical documentation to support that her husband is facing physical health problems.

The applicant's husband expressed that he is suffering emotional difficulty due to separation from the applicant, and it is understood that the separation of spouses often results in significant psychological suffering. The AAO has carefully examined the report from [REDACTED]. The report is helpful to provide information about the applicant's and her husband's background, relationship, and family connections in the United States. Yet, it is noted that the report was generated based on a single interview and testing, thus it does not represent an ongoing relationship with a mental health professional or treatment for mental health disorder. [REDACTED]'s report supports that the applicant's husband is facing substantial emotional hardship as a result of being separated from the applicant. However, it is not sufficient to distinguish the applicant's husband's psychological challenges from those commonly faced when spouses reside apart due to inadmissibility.

[REDACTED] indicated that the applicant's husband has significant ties to the United States including numerous family members, and that he has an extensive family support network. Thus, the record

reflects that he would continue to have support from close family members in the applicant's absence.

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

The applicant has not shown that her husband will face extreme hardship should he relocate to Mexico to maintain family unity. It is first noted that [REDACTED] report focuses primarily on the consequences of family separation, and it does not show the applicant's husband would face extreme emotional difficulty should he join the applicant in Mexico. While it is evident that the applicant's husband would endure separation from his family members in the United States, this represents a common consequence when an individual relocates abroad due to the inadmissibility of a spouse.

As discussed above, the applicant has not submitted medical documentation to show that her husband faces physical health problems that may contribute to his challenges in Mexico.

The applicant has not provided any documentation to show that her husband has employment in the United States, thus she has not shown that relocation would interfere with his employment. The applicant's husband expressed concern for his ability to secure employment in Mexico that is sufficient to meet his needs. The AAO takes notice that economic and employment conditions are less favorable in Mexico than they are in the United States, and that the applicant's husband would likely face financial challenges there. *United States Central Intelligence Agency World Factbook: Mexico*, updated April 21, 2010 (estimating that in 2009 unemployment in Mexico was 5.6 percent, underemployment was as high as 25 percent, and in 2008 more than 47 percent of the population lived under the asset-based poverty line). Yet, the applicant has not provided adequate explanation or documentation to show that her husband would face extreme financial circumstances in Mexico.

The applicant's husband indicated his concern for conditions in Mexico including crime. The AAO observes that the United States Department of State issued a Travel Warning for Mexico, warning that crime and violence has escalated throughout the country in all cities and that U.S. citizens should take precautions and remain in well-known tourist areas. *United States Department of State Travel Warning: Mexico*, dated September 10, 2010. However, the applicant has not presented evidence that shows where she and husband would be likely to live, and she has not described her experiences in Mexico such to show any risk her husband may face.

All stated elements of hardship to the applicant's husband, should he relocate to Mexico, have been considered in aggregate. Based on the foregoing, the applicant has not shown that her husband will endure extreme hardship should he reside in Mexico for the remainder of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Accordingly, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to her husband or father, as required for a waiver under section

212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings regarding a 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.