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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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JAN 04 2011

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date:

IN RE: Applicant: [REDACTED]

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:

[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 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 (“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 her husband and denied the Form I-601 application for a waiver accordingly. *Decision of the Acting District Director*, dated October 7, 2008.

On appeal, the applicant's husband states that he will suffer extreme hardship should he be separated from the applicant. *Statement from the Applicant's Husband on Appeal*, undated.

The record contains statements from the applicant's husband, relatives, neighbor, and church; a letter from a physician for the applicant's husband; a letter from an employer of the applicant's husband; documentation on conditions in Mexico; an evaluation of the applicant's husband conducted by a psychotherapist; banking records for the applicant and her husband, and; copies of photographs. The applicant further provided a document in a foreign language. Because the applicant failed to submit a translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. With the exception of the untranslated document, the entire record was reviewed and considered in rendering this decision.

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 resided in the United States without a lawful status from approximately June 2004 to September 2007. Thus, she accrued over three 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 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.

On appeal, the applicant's husband states that he will suffer extreme hardship should he be separated from the applicant. *Statement from the Applicant's Husband on Appeal* at 1. He provides that he has known the applicant for over four years and that they were married on May 5, 2006. He explains that he loves the applicant and enjoys spending time with her, and that she takes good care of him. *Id.* He indicates that his performance is not the same without the applicant's presence, that he has lost weight, and he has nervousness and concern for their future. *Id.* He adds that his situation is aggravating his hypertension and hearing impairment, and that he has had to postpone surgery because he requires the applicant's support and care. *Id.* He explains that he visits Mexico as often as he can, yet his job responsibilities make it difficult. *Id.*

The applicant's husband states that he is struggling to meet his expenses in the United States and the applicant's in Mexico. *Id.* He notes that he has had to take personal loans. *Id.*

The applicant's husband expresses that he is proud to be an American citizen, and that he does not understand why he would be forced to reside outside the United States due to the applicant's mistake. *Id.* at 2.

The applicant submits a letter from her husband's physician, [REDACTED] who states that the applicant's husband is treated for hypertension, hearing loss, and more recently anxiety and depression which have been aggravated due to separation from the applicant. *Letter from [REDACTED] [REDACTED] undated.*

The applicant provides an evaluation of her husband, conducted by a psychotherapist, [REDACTED] [REDACTED] states that the applicant's husband reported symptoms of depression, anxiety, and panic disorder, and that he exhibited difficulty managing his feelings due to the applicant's migratory status in the United States and their separation. *Report from [REDACTED] [REDACTED] dated October 28, 2008.* [REDACTED] provides that the applicant's husband's assessment scores reveal depression symptoms within the severe clinical range, severe to borderline with extreme symptoms of anxiety, and severe symptoms of panic. *Id.* at 2. [REDACTED] notes that the applicant's husband exhibited severe difficulty hearing during the interview, and that he revealed that he is hearing impaired and requires surgery and hearing devices. *Id.* [REDACTED] provides that the applicant's husband reported that he is experiencing severe financial impairment due to the applicant's absence from the United States. *Id.* [REDACTED] recommends that the applicant's husband begin and complete psychotherapeutic treatment in order to recover and cope with his symptoms and experience. *Id.* at 3.

Upon review, the applicant has not shown that her husband will suffer extreme hardship should the present waiver application be denied. The applicant has not asserted that her husband will experience hardship should he relocate to Mexico to join her. While the applicant submitted reports on crime and related poor conditions in Mexico, these reports address border regions including Ciudad Juárez and Tijuana. The record shows that the applicant resides in Mexico City, away from the border. The applicant has not provided explanation to show that her husband would be subjected to the risks described in the reports should he reside with her. The AAO takes notice 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 March 14, 2010. However, without specific assertions from the applicant, the AAO is unable to conclude that her husband would face conditions there that rise to an extreme level.

It is noted that the applicant's husband is a native of Mexico, thus the record supports that he would not face the challenges of adapting to an unfamiliar language or culture should he reside there.

The AAO has carefully examined the report from [REDACTED]. While [REDACTED] identified significant mental health challenges that the applicant's husband is facing, her report largely focuses on the applicant's husband's difficulties due to residing separately from the applicant. [REDACTED] does not address whether the applicant's husband would continue to face his present mental health challenges should he rejoin the applicant in Mexico.

[REDACTED] stated that the applicant's husband is treated for hypertension, hearing loss, and more recently anxiety and depression which have been aggravated due to separation from the applicant. However, the record does not show what specific treatment the applicant's husband requires, or establish that such treatment is unavailable to him in Mexico. As noted above, the applicant has not shown that her husband's mental health challenges will continue should he be reunified with the applicant.

Based on the foregoing, the applicant has not established that her husband will suffer extreme hardship should he relocate to Mexico to maintain family unity.

The applicant has not shown that her husband will suffer 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's husband stated that he is enduring economic difficulty due to separation from the applicant. However, the applicant has not presented adequate explanation or evidence of her or her husband's income or expenses. Thus, the AAO lacks sufficient documentation in order to conclude that the applicant's husband is unable to meet his needs unless the applicant resides in the United States.

The applicant's husband provided that he suffers from hearing impairment and that he requires surgery. While [REDACTED] noted that the applicant's husband is treated for hearing loss, he does not describe the degree of hearing loss or the course of treatment. [REDACTED] notes that the applicant's husband exhibited severe difficulty hearing during an interview, and her direct observations are given weight. However, her references to required treatment are not supported by medical documentation. The AAO acknowledges that the applicant's husband will face difficulty due to his physical impairments, yet without clear assertions or documentation, the applicant has not established that her absence will exacerbate her husband's conditions to an extreme level. Nor has the applicant shown that her presence is required in order for her husband to receive treatment.

As discussed above, the applicant submitted reports on conditions in the border areas of Mexico, yet she resides in Mexico City. She has not provided explanation to show that she faces immediate risks due to the information contained in the reports, such that she faces conditions that will cause her husband extreme emotional hardship.

The AAO has carefully examined the report from [REDACTED]. It is first noted that the report was generated based on a single interview, and it does not represent an ongoing relationship with a mental health professional or treatment for a mental health disorder. However, the report clearly reflects that the applicant's husband is enduring significant emotional difficulty due to separation from the applicant. The AAO has further examined the letters from relatives of the applicant's

husband in which they discuss his emotional difficulty and struggles due to separation from the applicant. It is evident that the separation of spouses often results in substantial psychological suffering. All evidence of challenges experienced by the applicant's husband must be considered in aggregate to determine whether his hardship can be distinguished from that which is commonly experienced when spouses reside apart due to inadmissibility. The applicant has not presented sufficient documentation to show that her husband's emotional difficulty is greater than that which is commonly experienced.

Based on the foregoing, the applicant has not shown that her husband will suffer extreme hardship should he reside apart from her 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, 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) 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.