

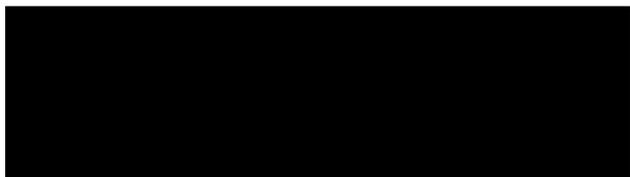
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

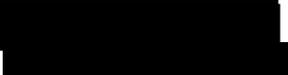


**U.S. Citizenship
and Immigration
Services**



tl6

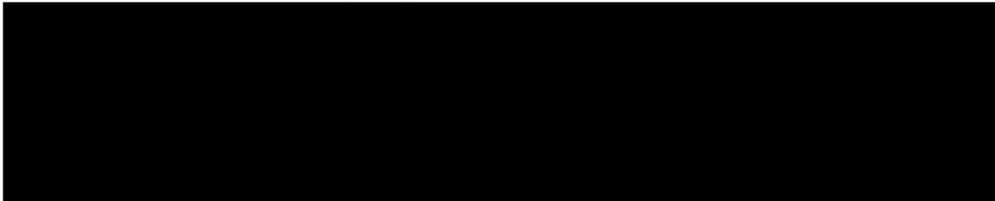
JAN 05 2011

FILE:  Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date:

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:

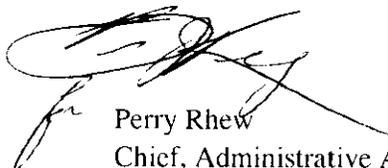


INSTRUCTIONS:

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

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

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to a United States citizen (USC) and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her USC husband and child.

The acting district director found that the applicant failed to establish extreme hardship to her spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated June 4, 2008. On appeal, counsel asserts that the acting district director did not consider all the relevant factors of hardship in the aggregate, and that the applicant's spouse will suffer extreme hardship if the waiver request is denied. *See Form I-290B, Notice of Appeal*, dated June 23, 2008 and a letter from counsel dated July 28, 2008.

On November 29, 2010, the AAO sent a request to counsel to submit the brief and/or additional evidence, which he indicated on the Form I-290B. On December 2, the AAO received a letter from counsel dated July 28, 2008, and additional evidence.

The record includes, but is not limited to, three statements from the applicant's husband, a letter from counsel dated July 28, 2008, a copy of a letter from Dr. [REDACTED], dated July 25, 2008, regarding the applicant, a copy of a letter from Dr. [REDACTED] issued on July 24, 2008, regarding the applicant's daughter, a copy of an undated Mental Health Evaluation of the applicant's husband by [REDACTED], Outpatient Therapist at [REDACTED], Wichita, Kansas, supportive letters and statements from family and friends, copies of financial and tax documents and copies of car insurance and telephone bills. The entire record was reviewed and considered in rendering this decision on appeal.

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

(B) Aliens Unlawfully Present -

(i) In general

Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years

of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver

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

In the present case, the applicant claims that she entered the United States without being inspected and admitted or paroled in July 2003. On November 21, 2005, the applicant's United States citizen husband filed a Form I-130 on the applicant's behalf, which was approved. In July 2007, the applicant voluntarily departed the United States. On August 10, 2007, the applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act by a United States Consular Officer in Ciudad Juarez, Mexico. On the same date, the applicant filed a Form I-601. On June 4, 2008, the Acting District Director denied the Form I-601, finding that the applicant failed to establish extreme hardship to her spouse. The applicant accrued unlawful presence from July 2003, when she illegally entered the United States until July 2007, when she voluntarily departed the United States. The applicant's unlawful presence for more than one year and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. Thus, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her child 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-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.

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. [redacted] 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.”). [redacted] 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 [redacted] 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.

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.

In this case, the record reflects that the applicant's spouse, [REDACTED], is a 32-year-old native of Mexico and citizen of the United States. The applicant and her husband were married in San Jose De Otates, Mexico, on February 26, 2002, and have one child. The record reflects that the applicant and her child currently reside in Mexico. The applicant's spouse asserts that he is suffering extreme emotional and financial hardship as a result of family separation and the denial of the applicant's waiver request.

Regarding the emotional and financial hardship of separation, the applicant's husband asserts that he misses the applicant and his child very much, that he has tried to visit them in Mexico, but that he can no longer afford to go to Mexico to see his family because of the financial burden on him. The applicant's husband asserts that separation from his family has been extremely stressful and emotionally traumatic for him, because he cannot be with his wife and his child, who cries every night for him. The applicant's husband asserts, "My work is suffering, as well as my plans to purchase a house and become part owner of the business I work for." *See Statements by [REDACTED]* [REDACTED] The applicant's husband also asserts that he is concerned for his family's health and well-being in Mexico because of the poor living conditions there, the inadequate health care system, lack of accessible public transportation in the area and available good schools for his daughter. The applicant's husband asserts that the applicant has a heart murmur and is seeking treatment for [REDACTED] his daughter is recovering from a broken forearm and is being treated for a valgus deformity, and because there is no medical clinic near where they live, he has to send money for them to travel to Mexico City to receive medical treatment.

Regarding the financial hardship of separation, the applicant's husband asserts that it is a financial burden for him to support his wife and child in Mexico as well as take care of all his financial obligations in the United States. The applicant's husband asserts, "The financial situation is such that I will be having to sell my pickup truck just to be able to afford to continue to send money to support my wife and daughter in Mexico." [REDACTED]

The record contains letters from doctors in Mexico regarding the medical problems and treatments given to the applicant and her daughter. The record also contains a copy of a Mental Health Evaluation from [REDACTED] regarding the applicant's husband. Ms. [REDACTED] stated that the applicant's husband suffers from Major Depressive Disorder, single episode, moderate, due to disruption of family by separation. Ms. [REDACTED] recommends that the applicant's husband obtain a medical evaluation to determine if an anti-depressant is needed to assist him, and to continue in therapeutic services if he continues to have difficulty managing symptoms. *See Mental Health Evaluation by [REDACTED] Outpatient Therapist,* [REDACTED]

The record also contains supportive letters from friends and family members attesting to the applicant's loving relationship with her family, a letter from the applicant's husband's employer and copies of U.S. Individual Income Tax Return(s) (Form 1040) for the applicant and her husband for the years 2004 through 2006.

The AAO acknowledges that separation from the applicant may have caused some hardship to the applicant's husband, however, the evidence in this record is insufficient to demonstrate that the challenges encountered by the applicant's husband meet the extreme hardship standard. While the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment by Ms. [REDACTED] is based on an interview with the applicant's husband. In

that the conclusions reached in the submitted assessment are based solely on the interview of the applicant's husband, the AAO does not find the report to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the report speculative and diminishing its value to a determination of extreme hardship. While the applicant's husband asserts that family separation has caused him extreme financial hardship, the record does not contain information about the family's expenses. Without such evidence, the AAO cannot conclude that family separation has caused extreme financial hardship to the applicant's husband. Finally, hardships faced by the applicant's child as a result of family separation are not considered in the extreme hardship analysis, except as it may cause hardship to the applicant's husband. The applicant's husband asserts that he is concerned about his child's health, education and well-being in Mexico because of their poor living conditions, and the poor medical and educational facilities there, however, the record does not contain any evidence, such as country condition information on Mexico to demonstrate that the applicant's child is experiencing any hardship there which has caused extreme hardship to the applicant's husband. The record contains a letter from Dr. [REDACTED] stating that he has treated the applicant's daughter for a fracture in her forearm, flat feet and a valgus deformity, and that she is making satisfactory progress with the valgus deformity treatment. The applicant has not provided any evidence that the applicant's daughter is not receiving adequate medical care in Mexico. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the applicant has failed to establish that the challenges her husband faces rise to the level of extreme hardship.

Regarding relocation, the applicant's husband states that he cannot relocate to Mexico to live with the applicant for the following reasons: he has been residing in the United States with his parents and siblings since he was 18 years old, he has significant family ties here in the United States, he has many financial responsibilities in the United States and will not be able to meet these responsibilities from Mexico because salaries in Mexico are low. The applicant also asserts that he does not have a house in Mexico and that the living conditions in Mexico are poor. [REDACTED]

[REDACTED] The applicant's husband further asserts that he cannot relocate to Mexico because his parents, who have various medical problems, depend on him. He states, "I can't imagine moving to Mexico because I know that [the parents] health will only get worse over the years. I need to be here for them." *See Statement by [REDACTED]*, dated July 28, 2008. Counsel asserts that it will be an extreme hardship for the applicant's husband to move to Mexico because he will be unable to earn the current income he receives in the United States, his parents reside in the United States and have health problems and they rely on his daily help. *See Letter from [REDACTED]*, dated July 28, 2008.

While the AAO acknowledges that the applicant has spent most of his adult life in the United States, and has family ties in the United States, the evidence in the record does not demonstrate that the applicant's husband would suffer extreme hardship if he relocated to Mexico to be with the applicant. The record does not contain documentary evidence such as country condition information on Mexico to demonstrate that the applicant's husband would be unable to obtain a good paying job in Mexico to take care of his family. The AAO notes that the applicant's husband is a native of Mexico, and he and the applicant were married in Mexico, however, he has failed to address any

family assistance he may have in Mexico that would help him adjust to life there upon return. Additionally, the AAO notes that other than the statement from the applicant's husband, the record does not include any evidence of financial, medical, or other types of hardships that the applicant's husband would experience if he relocated to Mexico with the applicant. Furthermore, the applicant has not provided any evidence to explain the reason why her husband's siblings who are residing in the United States will not be able to take care of their parents. Accordingly, the AAO does not find the record before it to demonstrate that the applicant's husband would suffer extreme hardship upon relocation to Mexico.

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

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

ORDER: The appeal is dismissed.