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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**

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[REDACTED]

FILE: [REDACTED] Office: MEXICO CITY, MEXICO Date: MAR 04 2011  
(CIUDAD JUAREZ)

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of  
the Immigration and Nationality Act, 8 U.S.C. § 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 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 his last departure from the United States. The applicant is married to a United States citizen and the father of two United States citizen children. He 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 his United States citizen wife and children.

The Acting District Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated July 21, 2008.<sup>1</sup>

On appeal, the applicant, through his representative, claims that the Acting District Director's decision "fails to fully consider the extreme hardship this family is going through" and "the future of their children is at stake should the family not be granted the opportunity to reunite." *Form I-290B*, dated September 15, 2008. Additionally, the applicant's representative states the applicant has submitted additional evidence to take into consideration. *Id.*

The record includes, but is not limited to, statements from the applicant's wife in English and Spanish<sup>2</sup>; letters of support for the applicant and his wife; medical documents for the applicant and his mother-in-law; pay stubs for the applicant's wife; mortgage documents, utility bills, insurance documents, medical bills, money transfer receipts, and a bank statement; and articles on digestive disorders, raising children in a single parent household, and depression. The entire record was reviewed and considered, with the exception of the Spanish language statement, in arriving at a decision on the appeal.

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

(B) Aliens Unlawfully Present.-

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<sup>1</sup> The AAO notes that the Acting District Director resent the decision to the applicant's correct address on August 18, 2008.

<sup>2</sup> Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As a statement from the applicant's wife is in Spanish and is not accompanied by an English-language translation, the AAO will not consider it in this proceeding.

- (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 record indicates that the applicant entered the United States in 1996 without inspection. In August 2007, the applicant departed the United States.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until August 2007, the date the applicant departed the United States. The applicant is seeking admission into the United States within ten years of his August 2007 departure. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 the United States Citizenship and Immigration Service (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 (Board) 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 first prong of the analysis addresses hardship to the applicant's spouse if she relocates to Mexico. In a statement dated September 15, 2008, the applicant's wife states that as a citizen of the United States, she does not want to move back to Mexico because it is a "foreign country to [her] now," and it "would be a struggle to have a life there." Additionally, the applicant's wife states she wants her children to have the best education possible in the United States. The AAO notes the concerns of the applicant's wife.

The AAO acknowledges that the applicant's wife has resided in the United States for many years; however, she is a native of Mexico and it has not been established that she does not speak Spanish or that she lacks family ties to Mexico. In fact, the AAO notes that the applicant's wife submitted a statement written in Spanish. Additionally, the AAO notes the record fails to contain any documentary evidence, e.g., country conditions reports on Mexico, that demonstrate that the applicant's wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States. 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)). The AAO notes that the record establishes that the applicant's wife has been prescribed an antidepressant and sleep aid. However, the applicant has not established that his wife requires treatment that is unavailable in Mexico. Therefore, the record fails to demonstrate that the applicant's wife has any medical condition, physical or mental, that would affect her ability to relocate or that she would experience any other form of hardship in Mexico. In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's wife would experience if she joined the applicant in Mexico, the AAO does not find the applicant to have established that his wife would suffer extreme hardship upon relocation.

In addition, the record does not establish extreme hardship to the applicant's wife if she remains in the United States. The applicant's wife states she feels "really lonely and without support." As noted above, the record establishes that the applicant's wife was prescribed medication for depression. However, the AAO finds that the applicant's wife's statement and the prescription notes do not establish that her emotional hardships go beyond the typical effects of separation. The AAO notes the applicant's wife's mental health concerns.

The applicant's wife states the applicant had "all of the house responsibilities. [The applicant] is the one who helps [her] pay the bills" and she cannot do it by herself. She states she and her children are dependent on the applicant. The applicant's wife states she earns \$8.00 an hour and she had to borrow money to pay bills. The AAO notes that documentation in the record establishes that the applicant's wife works approximately 66 hours every two weeks and earns \$8.00 an hour. The applicant's wife claims she has medical bills and a mortgage that they share with her parents. The AAO notes that the applicant submitted various household and medical bills. The applicant's wife states her parents cannot afford the mortgage without the applicant's financial assistance, she cannot afford to visit the applicant

in Mexico, and phone calls to Mexico are “very expensive”. The AAO notes the applicant’s wife’s financial concerns.

The applicant’s wife states her mother helped her with childcare “but she got sick and had to have surgery on 09/01/2008.” The AAO notes that medical documentation in the record establishes that the applicant’s mother-in-law had emergency surgery on September 1, 2008. The medical documentation establishes that the applicant’s mother-in-law was advised that she could return to work in 10 days from her surgery. In a statement dated September 15, 2008, counsel’s representative states the applicant’s son “was found to have a vision problem which needs to be treated or corrected. [The applicant’s wife] does not have insurance at the moment and for lack of funds has not been able to take him to an eye doctor.” In a letter dated September 1, 2008, the [REDACTED] Inc., recommended that the applicant’s son have “a professional eye examination because there appeared to be a vision problem.” The AAO notes that other than these statements, no evidence has been submitted establishing that the applicant’s son has had a more detailed examination or showing whether any treatment is required. Thus, the record does not show that the applicant’s son’s claimed vision problem would cause any additional hardship for the applicant’s wife.

The AAO acknowledges that the applicant’s wife may be experiencing some financial hardship; however, the AAO notes that the applicant failed to submit sufficient documentation establishing that his wife is unable to support herself in his absence. Additionally, while various household bills and mortgage documents were submitted, the record establishes that the applicant’s mother- and father-in-law are listed as co-borrowers on the mortgage. The applicant has not shown what portion of the bills are paid by his wife and what portion are paid by his in-law’s, and the applicant has not submitted any evidence establishing his in-law’s income. Therefore, the applicant has not fully established his wife’s expenses. Additionally, the AAO notes that the applicant has submitted no evidence to establish that he is unable to obtain employment in Mexico and, thereby, reduce the financial burden on his wife. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife will suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s spouse caused by the applicant’s inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether 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 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.