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

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U.S. Citizenship
and Immigration
Services

#6

[REDACTED]

FILE: [REDACTED] Office: MEXICO CITY, MEXICO Date: MAR 08 2011

IN RE: [REDACTED]

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to 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,

Michael Shumway

for 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 applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 admission within ten years of his last departure. The applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States.

The Acting District Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative. She denied the Form I-601, Application for Waiver of Ground of Excludability, accordingly. *Decision of the Acting District Director*, dated June 9, 2008.

On appeal, the applicant's spouse states that it has been difficult for her in the applicant's absence and that she has major financial obligations. She also asserts that the applicant's immigration situation has been stressful and that she has sought medical treatment to deal with its impacts. *Form I-290B, Notice of Appeal or Motion*, dated June 25, 2008.

In support of the waiver, the record includes, but is not limited to, statements from the applicant's spouse and stepdaughter; letters of support from friends of the applicant and his spouse, as well as the property manager of their apartment building; a copy of the lease agreement for the applicant's spouse's apartment and rent receipts; a medical note relating to the applicant's spouse; an employment letter and earnings statement for the applicant's spouse; documentation relating to a loan taken out by the applicant's spouse, as well as evidence of her other financial obligations, including a delinquent debt; and copies of receipts for money transfers sent to the applicant. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(9)(B) states 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 reflects that the applicant entered the United States without inspection in 1995 and remained until February 2007 when he departed for his immigrant visa interview at the U.S. consulate in Ciudad Juarez. Based on this history, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until his February 2007 departure from the United States. Accordingly, he accrued unlawful presence in excess of one year. As he is seeking admission within ten years of 2007 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act and must seek a section 212(a)(9)(B)(v) waiver.¹

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

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

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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

¹ The AAO notes that the record reflects that, on September 28, 2006, the applicant was convicted of intentionally giving a false or fictitious name, residence address or date of birth to a peace officer under Texas Penal Code § 38.02(b). We further observe that the Seventh Circuit Court of Appeals has held that furnishing false information to a police officer in order to avoid apprehension is a crime involving moral turpitude. *See Padilla v. Gonzales*, 397 F.3d 1016 (7th Cir. 2005). Although the record does not provide sufficient information for the AAO to determine whether the applicant's offense is similar to that considered in *Padilla v. Gonzales*, we do not find it necessary to reach a determination as to whether it bars his admission to the United States. His eligibility for a waiver under section 212(a)(9)(B)(v) of the Act will also meet the waiver requirements for any inadmissibility he may have under section 212(a)(2)(A)(i)(I) of the Act.

suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996)

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must

consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of

separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

In a statement, dated January 31, 2007, the applicant's spouse asserts that she would be unable to bear not seeing the children and grandchildren she would leave behind if she relocated to Mexico. She does not indicate that she would experience any other hardships upon relocation to Mexico and the record includes no evidence of any other hardships.

The AAO notes, however, that the appeal was submitted prior to the surge in drug-related violence that has recently spread across Mexico, a development that has resulted in the Department of State's issuance of a travel warning for those areas of Mexico experiencing heightened levels of violence stemming in great part from the activities of drug trafficking organizations. We have, therefore, considered whether the applicant's spouse would be moving to a location in or an area of Mexico that the Department of State has indicated should be avoided by U.S. citizens.

The record reflects that the applicant was born in Monterrey, Nuevo Leon, a location that the travel warning indicates has seen firefights between criminals and Mexican law enforcement, and where travelers on the highways between Monterrey and the United States have been targeted for robbery and car-jacking. The record also indicates that the applicant's father resides in the state of San Luis Potosi, an area that is not reported as being troubled by drug violence and related criminal activity. However, the record does not contain any evidence that establishes where the applicant has resided since his return to Mexico in 2007, whether he has returned to the city of his birth, joined his father in San Luis Potosi or has established a residence elsewhere. Without such information, the AAO is unable to assess whether the applicant's spouse would be understandably concerned for her safety if she joined the applicant in Mexico.

Having reviewed the record, the AAO does not find sufficient evidence to establish that the applicant's spouse would experience extreme hardship if she relocated to Mexico. It does not, as just discussed, offer sufficient evidence to demonstrate that the applicant's spouse would be concerned about her personal safety in Mexico. Neither does it prove that she would experience extreme emotional hardship as a result of her separation from her U.S. family.

Although the AAO recognizes family separation as a factor in determining extreme hardship and acknowledges that the applicant's spouse would suffer emotionally if she moved away from her family in the United States, we do not find the record to demonstrate that her emotional hardship would rise above the emotional distress normally created when families are separated as a result of removal or inadmissibility. U.S. courts have repeatedly held that such suffering is insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. We also note that the record contains no

documentary evidence that establishes the applicant's spouse has children and grandchildren residing in the United States. Accordingly, the AAO cannot conclude that the applicant's spouse would suffer extreme hardship if she relocates to Mexico to reside with the applicant.

In her statement of January 31, 2007, the applicant's spouse asserts that she does not understand why being without the person you love does not constitute extreme hardship. She claims that she is dependent on the applicant for moral support and that he is a good "handy man" who maintains her car. She also states that they have put off buying a home until such time as the applicant is granted lawful permanent resident status. The applicant's spouse reports that the applicant is a father figure for her children and is very close to her two grandsons for whom he provides discipline and guidance.

On the Form I-290B, the applicant's spouse claims that the stress she has experienced as a result of the applicant's inadmissibility has required several visits to the doctor. She also states that she suffers from migraine headaches as a result of stress and has high blood pressure for which she is taking medication. The applicant's spouse contends that this medication has resulted in depression and has changed her mood completely. The applicant's spouse also notes that she has significant financial obligations, including a loan she took out to help her pay for the applicant's immigration lawyer and for travel to Mexico. She asserts that her car is the collateral for this loan and if she fails to make the payments, she will lose it. The applicant's spouse states that she needs the applicant by her side to help and support her.

The record contains a handwritten medical note from a [REDACTED] dated July 7, 2008, that states the applicant's spouse has been diagnosed with hypertension and requires the applicant's "attention." The AAO also finds a June 27, 2008 typed note from [REDACTED], who identifies himself as one of the applicant's spouse's coworkers and states that he is concerned about her as she is very sad and cries all the time. He further asserts that her mind is far away and that he has to remind her to focus on her work.

The record also includes a range of documentation relating to the applicant's spouse's financial situation, including a letter from her employer, an earnings statement, loan and credit card statements, a settlement offer from a collection agency, receipts for money wired to the applicant in Mexico, a lease agreement establishing that the rent on her apartment is \$490/month, and a billing notice from a San Antonio law firm. The AAO finds the record to establish that the applicant's spouse earns approximately \$35,000 annually, based on her rate of pay, which is \$17.06/hour, and a 40-hour work week. The applicant's spouse's earnings statement issued for the period ending June 6, 2008 generally supports this estimate as it reports her gross wages, including overtime payments, for the first five months of 2008 as totaling \$19,032.

The record also reflects that, at the time she filed the waiver application, the applicant's spouse owed approximately \$8,447.58 to CitiFinancial, with a monthly payment of \$297.65 automatically withdrawn from her checking account. She also owed \$1,211.33 on a credit card issued by Citi Cards, all of which was due on March 11, 2008; \$256.22 to [REDACTED] and \$1,228.50 to the firm of [REDACTED]. The record

further includes a notice from NCO Financial Systems, Inc. offering to settle the applicant's spouse's \$6,938.28 debt for a lump sum payment of \$2,081.48.

Having reviewed the preceding evidence, the AAO does not find it sufficient to establish that the applicant's spouse would experience extreme hardship if the applicant's waiver application is denied and she remains in the United States. While the note from [REDACTED] establishes that the applicant's spouse suffers from hypertension, it does not indicate the severity of her condition or how it affects her ability to meet her daily responsibilities. Neither does the note explain why her condition requires the presence of the applicant or the type of assistance he is needed to provide. The record also fails to document that the applicant's hypertension is being treated with medication or that the medication she is taking has affected her mental health. 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)). Although the typed note from [REDACTED] states that the applicant's spouse is unfocused and sad at work, it is insufficient proof that she is suffering from depression or that her mental health is affecting her ability to meet her responsibilities at work. Further, the AAO notes that the statement submitted in [REDACTED] name does not bear his signature.

The applicant's spouse's claims about the role that the applicant plays in her children's and grandchildren's lives are acknowledged, but are not, as previously discussed, directly relevant to a determination of extreme hardship in this matter. No documentation has been submitted to establish how any hardship experienced by the applicant's spouse's children and grandchildren as a result of the applicant's inadmissibility would affect her, the only qualifying relative. Accordingly, the AAO has not considered the applicant's relationship to his stepchildren and grandchildren as a hardship factor.

The AAO does find the documentation relating to the applicant's spouse's financial situation to establish that in addition to such routine expenses as rent the applicant's spouse's has significant debt in the form of loans and/or credit card balances and that at least one of these debts has been turned over to a collection agency. We also find the receipts for wire transfers included in the record to demonstrate that the applicant's spouse has sent money to the applicant in Mexico. However, as the applicant's spouse does not indicate in either of her statements that she is supporting the applicant in Mexico, the AAO is unable to conclude that these receipts are proof of an ongoing financial obligation. Nevertheless, based on the documentation of the applicant's spouse's outstanding debt, the AAO finds that she would experience some level of financial hardship if the applicant's waiver application is denied and she remains in the United States.

While financial hardship is a factor considered by the AAO in determining extreme hardship, it cannot, by itself, provide a basis for a determination of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore finds that although the record demonstrates that the applicant's spouse would experience economic hardship in the applicant's absence, it does not establish that she would suffer extreme hardship. We further conclude that even when the applicant's spouse's economic hardship and the normal disruptions and difficulties created by the

separation of spouses are considered in the aggregate, the applicant has failed to demonstrate that his spouse would experience extreme hardship if she remains in the United States without him.

As the record does not establish that the applicant's spouse would suffer extreme hardship as a result of his inadmissibility, he is not eligible for a waiver under section 212(a)(9)(B)(v) of the Act. Having concluded that the applicant is statutorily ineligible for relief, the AAO finds 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)(i)(II) 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.