

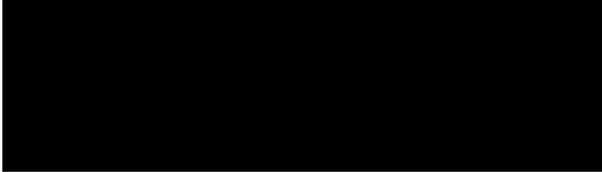
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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#6

FILE: [REDACTED] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: **MAR 31 2011**

IN RE: Applicant: [REDACTED]

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 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 the child of a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf. 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 mother and step-father.

The District Director found that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 19, 2008.

On appeal, counsel asserts that the director erred in finding that the applicant's qualifying relatives would not suffer extreme hardship if the applicant's waiver is denied. Counsel states that she will submit a brief and/or additional evidence to the AAO within 30 days of filing the Form I-290B. *See Form I-290B, Notice of Appeal*, dated September 17, 2008. On February 3, 2011, the AAO sent a request to counsel to submit the documentation as stated on the Form I-290B. On February 14, 2011, the AAO received additional documentation from counsel. The documentation is noted below and made part of the record.

The record includes, but is not limited to, applicant's brief in support of the appeal, affidavits from [REDACTED] and [REDACTED], the applicant's mother and step-father, an undated statement from [REDACTED] the applicant's step-father written in Spanish with no accompanying English translation,¹ a confidential report of psychological evaluation of the applicant's family by [REDACTED], Licensed Clinical Psychologist, and supportive statements from other family members. 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

¹ 8 CFR section 103.2(b)(3) provides that any document containing foreign language submitted to United States Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

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.

(iii) Exceptions

(I) Minors

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

....

(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 in January 1997 without being inspected and admitted or paroled. On March 10, 2004, the applicant's United States citizen step-father filed a Form I-130 on the applicant's behalf. On March 23, 2005, the Form I-130 was approved. In January 2007, the applicant voluntarily departed the United States. On January 29, 2007, the Consular Officer in Ciudad Juarez, Mexico, found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act and refused to grant her an immigrant visa. On February 6, 2007, the applicant filed a Form I-601 waiver. On August 19, 2008, the District Director denied the Form I-601, finding that the applicant failed to establish extreme hardship to a qualifying relative. The applicant accrued unlawful presence from May 13, 2003, the day she turned 18 years of age until January 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. 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother and

step-father are the qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-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.

In this case, the applicant’s mother and step-father state that they are suffering extreme emotional and financial hardships as a result of family separation and the denial of the applicant’s waiver request. [REDACTED], the applicant’s mother, states that she loves her children but is especially close to the applicant because the applicant helped her after her divorce from her abusive first husband, and she feels very bad because the applicant needs her and she is not there for her. [REDACTED] states that she is concerned for the applicant’s safety and overall wellbeing in Mexico because she is young and alone with just her young daughter and no immediate family support. [REDACTED] states that the applicant’s absence has been especially hard on the applicant’s younger siblings, which in turn causes her some hardship. [REDACTED] also states that she cannot sleep well since the applicant left the United States, and that she struggles with feelings of anger towards her husband, [REDACTED], because she blames him for the applicant’s immigration predicament. [REDACTED] further states that the applicant’s absence has caused some financial strain for the family because they are financially responsible for the applicant in Mexico and they also must meet their financial obligations for the family here in the United States. *See Affidavit by [REDACTED] dated October 2, 2008.* [REDACTED] the applicant’s step-father, states that he loves the applicant like his own child and misses her a lot and that the family is broken without the applicant. [REDACTED] states that he struggles with feelings that he is to blame for the applicant’s situation because he encouraged her to go to Mexico for her visa. [REDACTED] states that he is concerned about the applicant’s safety in Mexico because the country is not safe. [REDACTED] further states that the family is suffering from financial strain because it has been difficult to maintain the applicant in Mexico and maintain the family here in the United States. *See Affidavit by [REDACTED] dated October 2, 2008.*

The record contains a copy of a confidential psychological evaluation of the applicant’s family by [REDACTED] on August 30, 2008. [REDACTED] diagnosed [REDACTED] with Depressive Disorder, not specified. She states that [REDACTED]’s disorder is related to the applicant’s removal from the United States and his feelings of ineptness and personal responsibility for not securing the applicant’s immigration papers. [REDACTED] recommends clinical attention to [REDACTED] symptoms. [REDACTED] also diagnosis [REDACTED] with Major Depressive Disorder, Recurrent, Moderate. [REDACTED] states that [REDACTED]

has a history of depressive symptoms stemming from witnessing domestic violence and experiencing emotional abuse related to marital relations both past and current, and that her depressive symptoms have been exacerbated by the applicant's absence from her life. [REDACTED] recommends a psychiatric evaluation of [REDACTED] to assess whether she would benefit from psychopharmacological interventions. [REDACTED] concludes that it is in the family's best interest for the applicant to be present in the United States to provide the family with emotional and psychological support. *See Confidential Report of Psychological Evaluation of the applicant's family by [REDACTED]*

[REDACTED] dated September 21, 2008.

The AAO acknowledges that separation from the applicant may cause some challenges to her mother and step-father, however, it does not find the evidence in the record sufficient to demonstrate that the challenges they face rise to the level of extreme hardship. While the input of a mental health professional is respected and valuable, the AAO notes that the report by [REDACTED] is based on one interview with the applicant's family. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's mother and step-father or evidence of any treatment for the conditions noted in the evaluation, to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of extreme hardship. With regards to financial hardship, there is no information on the family's income and expenses. Without such documentation, the AAO cannot make a determination that separation from the applicant has resulted in extreme financial hardship to her mother and step-father.

Thus, the AAO finds that the evidence in this record, when analyzed cumulatively, fails to establish that the applicant's mother and step-father would suffer extreme hardship as a result of the applicant's inadmissibility to the United States.

Regarding relocation, [REDACTED] noted that the applicant's step-father had stated that moving to Mexico to reunite the family would be devastating because it would mean uprooting the entire family, changing schools for the children and leaving his current employment with no good prospect of getting employment in Mexico with similar wages as in the United States. The applicant's step-father also stated that he would have difficulty maintaining his household due to the likely low income he would receive in Mexico, and that the financial stress there would negatively impact the overall quality of life for the family. *See Confidential Report of Psychological Evaluation of the applicant's family by [REDACTED]*

[REDACTED] dated September 21, 2008. Counsel asserted that the current country conditions related to health care, the economy, and crime, are relevant factors to be considered if the applicant's mother and step-father were to relocate to Mexico to be near the applicant. *See Applicant's Brief in Support of the Appeal, submitted by counsel.* The record contains a copy of United States Department of State Travel Alert for Mexico, dated October 14, 2008 and other documents from the United States Department of State regarding the level of crime and violence in Mexico.

Here, the evidence in the record is sufficient to support a finding that the applicant's mother and step-father would suffer extreme hardship if they were to relocate to Mexico. Given the combination of [REDACTED] (the applicant's mother and step-father) strong family and community ties in the United States, and the documented country conditions in Mexico, departure from the United States would cause extreme hardship for the applicant's mother and step-father.

In sum, although the applicant has established that her mother and step-father would suffer hardship if they were to relocate to Mexico, the record does not support a finding that the difficulties to her mother and step-father as a result of family separation, when 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 mother and step-father 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 failed to establish extreme hardship to her mother and step-father, as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.