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U.S. Department of Homeland Security
U. S. 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

H6

[redacted]

FILE: [redacted] Office: MEXICO CITY, MEXICO
PANAMA CITY, PANAMA

Date: MAR 3 1 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); and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 34-year-old native and citizen of Ecuador 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 (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 his USC spouse and children.

The acting district director found that the applicant had 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 Acting District Director*, dated October 30, 2008.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish extreme hardship to his spouse and children. *See Form I-290B,* dated November 26, 2008, and brief in support of the appeal.

The record includes, but is not limited to, counsel's brief in support of the appeal, affidavits from the applicant's spouse, supporting affidavits from the applicant's spouse's parents and a letter from [redacted], a teacher [redacted] The entire record was reviewed and considered in rendering this decision on the 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 record reflects that the applicant entered the United States on January 6, 1994, without being inspected and admitted or paroled. On August 19, 2000, the applicant filed an Immigrant Petition for Alien Worker (Form I-140), which was approved on November 6, 2000. On April 2, 2001, he filed an Application to Register Permanent Resident or Adjust Status (Form I-485), which was administratively closed on October 27, 2004. On March 4, 2006, the applicant was removed from the United States to Ecuador. On April 30, 2001, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on his behalf, which was approved on December 11, 2001. On June 5, 2008, the applicant filed a Form I-601 waiver and an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212). On October 30, 2008, the acting district director denied the Form I-601, finding that the applicant failed to establish extreme hardship to his spouse. The acting district director also denied the Form I-212 application. The applicant accumulated unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence law under the Act until November 2000 and again from October 2004 until his removal on March 4, 2006. The applicant's unlawful presence of more than one year and removal from the United States on March 4, 2006, 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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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. *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 record reflects that the applicant's spouse, [redacted] is a 30-year-old native of Ecuador, and citizen of the United States. The applicant and his wife were married in Brooklyn, New York, on January 20, 2001, and they have two children.

The applicant's spouse states that the applicant had been the sole supporter for her and her children before he was detained and deported from the United States, and that his removal from the United States has caused her and her children extreme emotional and financial hardship. The applicant's spouse states that her salary is not sufficient for her to take care of her family and the applicant is

unable to financially support the family from Ecuador, so she has had to rely on her parents for help. The applicant's spouse states that she has had to live in constant stress and sadness, that she cries all the time, that she cannot sleep at night and that her older child, [redacted], has shown signs of withdrawal and emotional hardship because of the applicant's absence. The applicant's spouse states that she needs the applicant back in the United States so that she can better take care of her children and the family. *Affidavit of* [redacted] dated November 22, 2008. The applicant's spouse's father, [redacted] states that the applicant's spouse has had an extremely hard and a difficult time dealing with the children by herself and having to work to provide for them since the applicant left for Ecuador. [redacted] states that the applicant's spouse was recently laid off from her job and that he has been helping her pay her rent by giving her $500.00 per month and he also helps her purchase food for the family, but that he does not know how long he will continue offering such support because his job "is far from secure." *Affidavit of* [redacted], dated December 30, 2008. [redacted], [redacted] teacher, states that she has noticed that [redacted] is very withdrawn in class and that he is struggling in all areas of his work, and she feels this is directly related to the applicant's absence. [redacted] also states that [redacted] yearns for the applicant's presence and love and misses his nurturing support, that [redacted] has had a hard time focusing in class and that he is not progressing socially, emotionally or academically, which has impacted his wellbeing. *See Letter from* [redacted] dated November 21, 2008.

The AAO acknowledges that separation from the applicant may have caused some challenges for his spouse, however, it does not find the evidence in the record is sufficient to demonstrate that the challenges the applicant's spouse faces, meet the extreme hardship standard. While the applicant's spouse claims that separation has caused her and her children extreme emotional hardship, the record does not contain medical records, detailed testimony, or other evidence to demonstrate any emotional or psychological hardships his wife faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. The record does not contain detailed information on the family's current income and expenses, or evidence of the applicant's income while in the United States. Also, while the applicant's spouse claims that the applicant is unable to financially support the family from Ecuador, and that her father has been contributing towards rent and food for her and her children, the record does not contain documentation to show the amount of contribution other than [redacted] statement. Without such documentation, the AAO cannot conclude that family separation has caused extreme financial hardship to the applicant's spouse. 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)). Finally, hardships faced by the applicant's children as a result of family separation are not considered in the extreme hardship analysis, except as it may impact the applicant's spouse. In this case, the applicant's spouse claims that her son, [redacted], is emotionally disturbed and that he is showing signs of withdrawal because of the applicant's absence, however, there is no evidence in the record to support these claims or to show that the impact on the applicant's spouse renders her hardship extreme.

Regarding relocation, the applicant's spouse states that she does not want to relocate to Ecuador because her children are United States citizens, she wants them to live in the United States to fulfill "our American dreams," she wants her children to receive their education in the United States, and that relocating to Ecuador will cause them to lose their chance of getting a better education. Counsel asserts

that the applicant's spouse would face extreme hardship if she is forced to relocate to Ecuador because of the following: the applicant's spouse has been living in the United States since she was 12 years old, her parents and sisters live in the United States, she does not have significant family ties in Ecuador, it would be virtually impossible for her to obtain a job in Ecuador because she does not have any special skills, and she would be forced to be separated from her family, relatives and community in the United States. *See Counsel's Brief in Support of the Appeal.*

The AAO acknowledges that the applicant's spouse has been residing in the United States for a long period of time and that she has family ties in the United States that may be impacted by her relocation to Ecuador, however, the record does not contain evidence such as country condition reports to demonstrate that the applicant's spouse would be unable to find a job in Ecuador. There is no evidence in the record showing the applicant's living conditions in Ecuador, or otherwise demonstrating the conditions the applicant's spouse is likely to face if she moves there. Additionally, other than the statements from the applicant's spouse and counsel, there is no evidence of medical, financial or other types of hardship the applicant's spouse would face upon relocation to Ecuador. Therefore, the AAO finds that the applicant has failed to establish that his spouse would suffer extreme hardship upon relocation to Ecuador.

In sum, although the applicant's spouse claims hardships based on family separation, the record does not support a finding that the difficulties she faces, 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 his 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.

The AAO notes that the acting district director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(v) of the Act no purpose would be served in granting the applicant's Form I-212.

ORDER: The appeal is dismissed.