

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

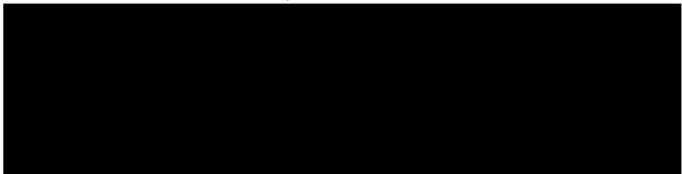
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H3



FILE:



Office: CHICAGO, IL

Date:

APR 24 2007

IN RE:

Applicant:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The record reflects that the applicant is a native and citizen of Mexico. The applicant 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. The applicant presently seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director found the applicant had failed to establish her that husband would suffer extreme hardship if he remained in the United States without the applicant, or if he moved with the applicant to Mexico. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 Application) was denied accordingly.

On appeal, the applicant asserts through counsel, that the district director misapplied the extreme hardship standard, and that the evidence in the record establishes that the applicant's husband (██████████) would suffer extreme hardship if he moved to Mexico with the applicant, or if he remained in the United States without her.

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

(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 Secretary, Department 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 Attorney General [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.

The record reflects that the applicant initially entered the United States on May 2, 1998 with a B2 visitor visa valid through November 1, 1998. The applicant did not depart the United States when the validity of her visitor visa expired. The applicant subsequently married a U.S. citizen on September 5, 2003, and she filed a Form I-485 Application for Adjustment of Status on March 25, 2004, more than five years after the expiration of the applicant's visitor's visa. The applicant was thus unlawfully present in the U.S. for over one year. The applicant departed the United States and subsequently reentered with advance parole authorization on November 28, 2004. The applicant became subject to section 212(a)(9)(B)(i)(II) of the Act inadmissibility

provisions upon her departure from the United States. She is eligible to apply for a waiver of inadmissibility under Section 212(a)(9)(B)(v) of the Act based on her marriage to a U.S. citizen.

The applicant asserts that her move to Mexico would result in extreme hardship to her husband. To support her assertions, the applicant submits an affidavit from her husband, as well as medical letters, career and educational opportunity documentation, and letters reflecting her husband's close family ties in the United States.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

U.S. court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the U.S. Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit Court of Appeals emphasized that the common results of deportation are insufficient to prove extreme hardship. The U.S. Ninth Circuit Court of Appeals held in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of "extreme hardship." In addition, the Board held in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. The U.S. Supreme Court held further in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record contains the following evidence relating to the applicant's husband's extreme hardship claim:

A May 2, 2005 affidavit written by Mr. [REDACTED] stating that his family has a history of depression, and that prior to meeting the applicant he suffered from depression and anxiety and took anti-depressant medication for 18 months. Mr. [REDACTED] states that his symptoms of depression subsided after meeting the applicant, but that the symptoms returned when he received news that the applicant may not be allowed to remain with him in the United States. Mr. [REDACTED] states that his entire family is in the United States, and that he socializes with his family often. He indicates that he would miss his family if he moved to Mexico with the applicant. He additionally states that he would lose his career if he relocated to Mexico. Mr. [REDACTED] states that he has a Bachelor of Science degree in health science, that he has dedicated the past 13 years of his life to a career in health science and food safety, and that over the last eight years he has worked his way up to being the Director of Quality Assurance & Hazard Analysis Critical Control Point at Specialty Foods Group, Inc. Mr.

██████████ states further that he receives health, retirement and employment benefits through his work, and that he plans to pursue an opportunity to obtain an MBA degree paid for by his employer. Mr. ██████████ states that he does not speak, read or write Spanish and that he would thus be unable to pursue a career in health science in Mexico. Mr. ██████████ also notes his concerns about crime, a poor economy and unhealthy environmental conditions in Mexico, and he expresses his desire to raise a family in the future in the United States.

Two letters from Specialty Foods Group, Inc. reflecting that the company has offered to pay for Mr. ██████████ to attend an MBA program, and that Mr. ██████████ has worked for them for eight years and has held increasingly responsible positions, including his present position as Director of Quality Assurance and Hazard Analysis Critical Control Point.

Certificates reflecting Mr. ██████████ completion of various management, health and food safety training courses over the past ten years.

A May 5, 2005, letter from ██████████ M.D. reflecting that Mr. ██████████ began treatment with her on December 15, 1998, at which time the following emotional problems were noted: anxiety reaction; depression; intractable stress syndrome; panic attacks; and insomnia. The letter states that Mr. ██████████ was placed on Paxil 10mg every night, and that he was advised to participate in stress management, group therapy and family involvement. Dr. ██████████ states that she saw Mr. ██████████ again on January 18, 2001, and that he was improving at that time. Mr. ██████████ next visit to her office occurred on March 12, 2005, due to a reoccurrence of anxiety, depression, insomnia and panic attack emotional problems related to the applicant's possible removal from the United States. Dr. ██████████ states that she has placed Mr. ██████████ on Paxil 10mg medication again to help reduce his symptoms. A copy of Mr. ██████████'s medical prescription is attached to the letter.

An April 4, 2005, affidavit from licensed psychologist, ██████████ based on a March 30, 2005, interview with the applicant and Mr. Siefert. Dr. ██████████ notes that Mr. Siefert has become anxious and depressed since learning of the applicant's possible long-term separation from him, and that he has become disinterested in previously enjoyable activities, fatigued, and temperamental at his work, and that he has lost weight due to decreased appetite. Dr. ██████████ notes that when presented with the prospect of avoiding separation from his wife by accompanying her to Mexico, Mr. ██████████ did not think it was possible because he felt he would lose his current career and would be unable to start a new career or life in Mexico. He also did not want to be separated from his family in the United States. Dr. ██████████'s affidavit states that Mr. ██████████ suffers from Major Depressive Disorder. She states that Major depression is an extremely serious mental illness with the potential to develop into an exacerbated depression. Dr. ██████████ states further that Mr. ██████████ depression is reactive, in response to the possible long-term separation from his wife, and that the situational nature of his disorder makes it unlikely that anti-depressant medication or psychotherapy will alleviate the root cause of the problem. Dr. ██████████ concludes that Mr. ██████████ emotional condition would be best served if he and his wife could live together in the United States

Numerous letters from family members and friends discussing the positive and loving relationship between the applicant and Mr. [REDACTED], and the negative effect a separation would have on the couple, and discussing their frequent get-togethers with Mr. [REDACTED] and the applicant.

Upon review of the medical evidence contained in the record, the AAO finds the applicant has established that if Mr. [REDACTED] remains in the United States, and does not go with the applicant to Mexico, he will suffer extreme emotional hardship that goes beyond that ordinarily associated with removal of an alien family member. The AAO finds further that the cumulative evidence contained in the record establishes that Mr. [REDACTED] would also suffer extreme hardship if he moved to Mexico with the applicant due to: his inability to speak, read or write Spanish and the associated difficulty this would cause in finding a job; the loss of his current career of 13 years; the loss of his job-related benefits; the loss of his career-related educational opportunities, and the effect his emotional condition would have on him if he were separated from his family in the United States. Accordingly, the AAO finds that the applicant has established that her husband would suffer extreme hardship if her Form I-601 application is denied.

The AAO finds further that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). In evaluating whether relief is warranted in the exercise of discretion, the factors adverse to the alien may include the nature and underlying circumstances of the removal ground at issue:

[T]he presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives.)

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must:

[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.

Id. at 300. (Citations omitted). The adverse factors in the present matter are the applicant's overstay of her initial visa and her lengthy period of unauthorized presence in the United States. The favorable factors are the applicant's marriage to a U.S. citizen; the extreme hardship the applicant's husband would suffer if the applicant's Form I-601 application were denied; the applicant's compliance with immigration laws when she was initially admitted into the United States as a nonimmigrant visitor; and her compliance with immigration

adjustment of status and advance parole procedures. Additional favorable factors include the applicant's lack of a criminal record, and the affidavits from the applicant's husband, the couple's family and friends, and the applicant's employer, exhibiting the applicant's good moral character.

The AAO finds that although the immigration violations committed by the applicant are serious in nature and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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. The AAO finds that the applicant has met her burden of proof in the present matter. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The application is approved.