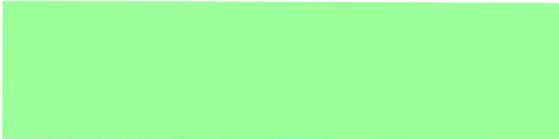




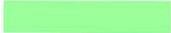
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 07 2013**

Office: MONTERREY, MEXICO

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v); and section 212(h) of the Act, 8 U.S.C. § 1182(h)

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Monterrey, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who was found to be inadmissible 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. The field office director stated that the applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). The field office director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and that a favorable exercise of discretion was warranted, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel argues that the adjudication officer incorrectly identified a lawful permanent resident parent as the qualifying relative, and did not consider extensive evidence of hardship financial and emotional hardship to the qualifying relative, who is the applicant's U.S. citizen spouse. Counsel asserts that the applicant's wife was diagnosed by a clinical psychologist as having depression, obsessive-compulsive disorder and hostility due to separation from the applicant and witnessing her daughter's reaction to her father's absence. Counsel states that the applicant's wife and daughter moved in with his mother-in-law because they lost their sole means of support, which was the applicant's income. Counsel asserts that the applicant's wife now works full time and her mother takes care of her daughter, but this arrangement will eventually end as the applicant's mother-in-law has myeloproliferative disorder (causes fatigue, pain, and proneness to infections) and the applicant's wife will not be able to afford daycare services. Counsel declares that the applicant's mother-in-law may require a bone marrow transplant and the applicant's wife is a ready donor. Counsel states that the applicant's wife is experiencing emotional hardship due to the effect that separation from the applicant has had on her young daughter's behavior, academic performance, and diet.

As to relocation to Mexico, counsel asserts that the applicant's wife does not speak Spanish well and is not familiar with Latino culture, and that the applicant's daughter does not speak or read in Spanish and is struggling in school. Counsel contends that the applicant's wife financially assists her husband and his parents because they are not able to support themselves in Michoacán. Counsel declares that the applicant's wife asserts that they live in a remote area in Michoacán that has no power or running water and is over an hour away from a medical facility and this lifestyle would jeopardize her daughter's wellbeing. Counsel cites to a U.S. Department of State travel warning about Mexico as consistent with the applicant's wife's concerns about Michoacán.

Counsel asserts that the applicant was arrested for assaulting his wife, but no charges were filed. Counsel argues that in the discretionary analysis the adjudication officer gave too much weight to the adverse factors (entry into the United States without inspection and arrest for assault in the fourth degree) and failed to consider the favorable factors, which are the applicant's remorse for entry without inspection and unlawful presence, his lack of criminal convictions, and dedication to his family.

We will first address the finding of inadmissibility.

The applicant was found to be inadmissible under section 212(a)(9)(B) of the Act. That section reads:

(B) Aliens Unlawfully Present

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection on March 1, 2001 and voluntarily departed in December 2007 pursuant to an order of the immigration judge. Accordingly, the applicant accrued unlawful presence for more than one year, and his voluntary departure triggered the ten-year bar, rendering him inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 and his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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-Morales*, 21 I&N Dec. 296, 301 (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., *Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d 1292, 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one

another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In rendering this decision, the AAO will consider all of the evidence in the record such as copies of invoices, photographs, financial records, affidavits, school records, birth certificates, a marriage certificate, Western Union receipts, Kmart Store wire transfers, medical records, letters, criminal records, as well as information about country conditions, education, and employment in Mexico.

The applicant's wife asserts in the letter dated December 6, 2010 that she would have difficulty living in Mexico because of the living conditions in Michoacán. She contends that there is no electricity, stove, refrigerator, bathroom, or running water in the house of her in-laws. She states that water must be hand carried in buckets from a river that is an hour away on foot, and that the water must first be boiled before it is drinkable. She declares that there is no bathroom to shower so buckets of water and cups are used to bathe, and that the outhouse toilet is away from the house, which worries her because of the wild coyotes, snakes, and scorpions and the far distance from the nearest hospital, which is one hour away. She contends that her daughter's education would suffer because she does not speak Spanish, and already struggles in school. The applicant's wife asserts that the schools in Michoacán have few teachers, are small, and lack running water and a bathroom. She declares that Mexico is an unsafe place to live because of drug wars.

The applicant's wife states in the affidavit dated May 19, 2011 that she lives with her parents and daughter, who was born on April 2, 2005, and prior to this living arrangement she and her daughter lived with the applicant, who financially supported them. The applicant's wife asserts that she now works full time while her mother, who has myeloproliferative disorder, takes care of her daughter. She states that in 2008 she went to Mexico to marry the applicant and spent three months with him in La Palma Altamira, Michoacán, and found it was not safe because of drug gangs. She declares that while they were there a child in La Palma was kidnapped and killed because his parents could not afford the ransom. She asserts that her husband cannot afford to move from his parent's house and she sends him money. The applicant's wife declares that she does not speak much Spanish, and does not think she would be able to find enough work to support their daughter. She contends that her daughter needs the applicant and she cannot bear for her to grow up without him. The applicant's wife asserts that she has been struggling with depression because of separation from her husband and saw a clinical psychologist. She contends that she does not earn enough money to travel to Mexico and that her money is used to support her husband and his parents.

The applicant declares in the letters written in April 2011 that he misses his wife and daughter, but they would not be able to survive where he lives. He states that his town does not have a clinic, that he does not have transportation, and must travel far to get water that is not safe to drink. He asserts that the school in his town is old, the children are poor and do not have food, and his parent's house lacks heat and electricity. The applicant contends that there are no jobs in which to earn money to survive and children have died from lack of medicine and medical care. He declares that in Mexico his daughter would not have a school comparable to the one she attends in the United States, and would not have sufficient food and clothing for there are days when he and his parents have no food to eat. The applicant asserts that gangs and crime make living in Mexico dangerous.

The asserted hardships of remaining in the United States without the applicant are emotional and financial in nature. The claim of emotional hardship to the applicant's wife is in agreement with letters from family members, the affidavit from the applicant's wife, and the psychological evaluation dated December 10, 2010. [REDACTED] states in the evaluation that the applicant's wife has "symptoms of depression in the context of a 3-year separation from her husband" and diagnosed her with adjustment disorder with anxiety and depressed mood, and an eating disorder. The applicant's wife claims she is experiencing financial hardship without income from her husband. Her claim is congruent with the letter from her employer dated April 15, 2010 for it reflects she works full time and earns \$10.50 per hour, and the 16 wire transfers and money grams showing that since 2009 she has financially supported her husband. The applicant's wife's anxiety about her husband's safety in Michoacán is in agreement with the submitted travel warning stating that the State of Michoacán is home to the dangerous transnational criminal organization (TOC) "La Familia," and that there have been attacks on government officials, law enforcement and military personnel, and other incidents of TCO-related violence throughout Michoacán. U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Mexico (April 22, 2011). When we combine the asserted emotional and financial hardship factors together, we find they demonstrate that the hardship to the applicant's wife if she remains in the United States while her husband lives in Michoacán is extreme in that it is more than the typical or common hardships of inadmissibility.

The claimed hardships to the applicant's wife in relocating to Mexico with her husband are having an impoverished living standard, distress about a substandard education for her daughter, not being able to find a job that will pay enough to survive, and fear they will become victims of drug-related violence. The applicant's assertion that he is not able to support himself in Michoacán is consistent with letters by his wife and the money grams and wire transfers. The applicant's claim that it is dangerous in Michoacán is in accord with the earlier described travel warning about Mexico. The applicant's wife's statement that her daughter is struggling academically and her education will be jeopardized in Michoacán is in agreement with the parent notification stating that the applicant's daughter was in the low strategic group, and the article from Cambio de Michoacán asserting that Michoacán has over a million people "above the age of 15 that have not finished their basic education, while in the illiteracy category you can find more than 300 thousand Michoacán inhabitants who are illiterate." When the asserted hardship factors are considered together, they establish that the hardship to the applicant's wife in relocating to Mexico would be extreme and more than the common or typical result of inadmissibility.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated:

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the 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).

Id. at 301.

The AAO must then, “[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 factors adverse to the applicant in the instant case are his entry without inspection in 2001, unlawful presence, as well as any unauthorized employment. The favorable factors are the extreme hardship to the applicant’s wife, the hardship to his young daughter, as well as their maintaining a close relationship during their years of separation. Letters from his wife’s family members attest that the applicant is a good husband and father, and provider for his family. The applicant has no criminal convictions.

When we consider and balance the favorable factors against the adverse factors, we find that the favorable factors outweigh the adverse factors and the grant of relief in the exercise of discretion is warranted in this case.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.