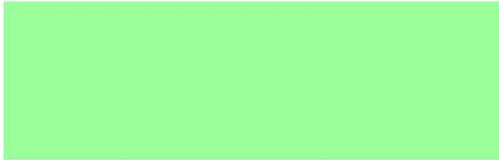


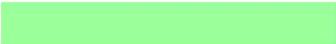
(b)(6)

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



DATE: **SEP 05 2013** OFFICE: ANAHEIM

File: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch, Anaheim, California, on behalf of the Field Office Director, Ciudad Juarez, 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 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 one year or more and seeking admission within 10 years of his last departure from the United States. The applicant is the son of a U.S. citizen and a lawful permanent resident and the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen father. The applicant does not contest the finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(9)(B)(v), in order to reside in the United States with his parents and sister.

The International Adjudications Support Branch concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision on Behalf of the Field Office Director*, dated February 8, 2013.

On appeal, the applicant's father asserts the evidence in the record and the additional documentary evidence demonstrate the suffering and extreme hardship he has been enduring because of the applicant's inadmissibility. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), dated March 5, 2013.

The record includes, but is not limited to: correspondence; letters of support; identity, psychological, medical, and financial documents; photographs; Internet articles; and documents on conditions in Mexico. The entire record was reviewed and considered in rendering a 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.

...

(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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The record establishes the applicant entered the United States without inspection by immigration officials around February 2004 and remained until around December 2010, when he voluntarily left. The record reflects the applicant has remained outside the United States to date. The record further establishes the applicant turned 18 years of age on March 14, 2009. Thereby, the applicant accrued unlawful presence from March 14, 2009 until December 2010, a period in excess of one year. Accordingly, the AAO finds the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, and he requires a waiver under section 212(a)(9)(B)(v) 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 sibling can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen father and lawful permanent resident mother are the only demonstrated 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).

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 of Immigration Appeals (BIA) 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. at 565. The factors include the presence of a lawful permanent resident or U.S. 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 BIA 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 BIA 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; *In re 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 BIA 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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 support of the hardship the applicant's parents have suffered in the applicant's absence, the record includes a letter from a therapist at [REDACTED] which states that the applicant's father has been diagnosed with Chronic Adjustment Disorder with Mixed Anxiety and Depression as a result of the applicant's return to Mexico, and the applicant's father's mental health condition is causing him to experience a decline in his physical health, resulting in his inability to be employed and travel to Mexico. The record also includes a medical letter and medical reports from an advanced practice nurse at the [REDACTED] which indicates the applicant's father's current medical conditions and treatments, including Diabetes Mellitus –Type 2 (uncontrolled), Diabetic Neuropathy, and Hyperlipidemia. Additionally, the record includes

medical reports from the applicant's mother's treating physician at the [REDACTED] which indicates her current mental and physical health conditions and treatments, including Depression – Major and hypertension, due to her worry for the applicant in Mexico. Further, the record includes a letter from the applicant's father, in which he states that he finds it difficult to support two households, and a letter from the applicant's mother, in which she states that she worries about the criminal violence that is occurring where the applicant lives, and the applicant is an "easy target" as everyone in his small village knows he is alone and his family lives in the United States.

The AAO finds the record is sufficient to establish the applicant's parents' continue to experience a decline in their physical and emotional health in the applicant's absence, and the applicant would serve an essential role in the emotional wellbeing of his parents. Moreover, the AAO notes in its latest travel warning for [REDACTED], Mexico, where the applicant currently resides, the U.S. Department of State indicates, "defer non-essential travel to the state of San Luis Potosi, except the city of [REDACTED] where ... exercise caution. The entire stretch of highway [REDACTED] and portions of the state east of highway [REDACTED] are particularly dangerous ... Cartel violence and highway lawlessness are a continuing security concern." *Travel Warning, Mexico*, issued July 12, 2013. Accordingly, the AAO finds the applicant's parents would suffer physical and emotional hardship in the applicant's absence. However, the AAO notes the record is unclear concerning the applicants' parents' financial solvency. The applicant's father's therapist states he "is experiencing declining physical health that has led to his inability to be employed at this time." Yet, the record does not include any evidence of the applicant's parents' household income and current financial obligations, other than remittances to Mexico, demonstrating the applicant's parents are unable to meet their financial obligations in the applicant's absence. Nevertheless, the AAO finds, in the aggregate, the applicant's parents would suffer extreme hardship upon separation from the applicant.

In support of the hardship he, his wife, and daughter would suffer if they relocated to Mexico to be with the applicant, the applicant's father indicates: he would jeopardize his and his family's safety if they were to move to Mexico given its "current crime rate situation", and the criminal cartel targets U.S. citizens to ambush and kidnap for ransom; the criminal cartel has already warned his family to pay "rent", otherwise, it will send people to look for him and kill him; he would be unable to get the necessary care in Mexico for his physical conditions; and it would be "near impossible" to find a job, and if he does, it will not be enough on which to support his family.

As mentioned previously, the AAO notes the travel warning for San Luis Potosi, Mexico, presumptively where the applicant and his parents would reside. Also, the record reflects the applicant's father has resided in the United States for almost 23 years, where he maintains immediate family ties and he and the applicant's mother continue to receive medical care. The record also reflects the applicant's mother and sister continue to maintain their lawful permanent resident status. Accordingly, the AAO finds, in the aggregate, the applicant's parents would suffer extreme hardship if they were to relocate to Mexico.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen father and lawful permanent resident mother, familial ties, and the absence of a criminal record. The unfavorable factors include the applicant's initial entry without inspection and periods of unauthorized presence and employment.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.