



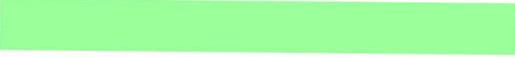
**U.S. Citizenship
and Immigration
Services**

(b)(6)



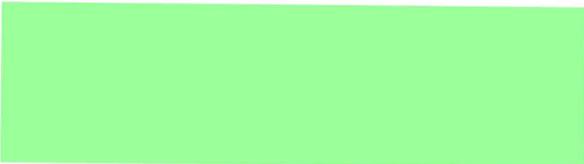
DATE **SEP 05 2013** OFFICE: ANAHEIM

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:



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 lawful permanent resident and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, 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 father.

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 December 12, 2012.

On appeal, counsel asserts new documentary evidence demonstrates the applicant's father will suffer extreme hardship because of the applicant's inadmissibility as the applicant's father suffers from multiple medical problems, and he is dependent on the applicant for care and support. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), dated January 10, 2013.

The record includes, but is not limited to: correspondence from counsel; letters of support; identity, psychological, medical, and financial documents; and documents on conditions in Mexico.¹ The entire record, with the exception of the Spanish-language documents, 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-

¹ The AAO notes the record contains some documents in the Spanish language. 8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to 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.

As certified translations have not been provided for these foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these documents in support of the appeal.

...

(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. 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 September 2007 and remained until around April 2012, when he voluntarily left. The record reflects the applicant has remained outside the United States to date. Thereby, the applicant accrued unlawful presence from September 2007 until April 2012, 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident parent is the only demonstrated 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 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 he has suffered in the applicant's absence, the applicant's father indicates: he is "going through extremely difficult times right now"; he is suffering from gastritis and arthritis; he has sought chiropractic treatment for a work-related injury; he is having difficulty finding steady work in the construction industry as he and the applicant "were always a team" because the applicant would help him to find work and drive him as he is illiterate and he does not have a driver's license; he needs financial help, which the applicant provided when he was in the

United States; and he worries for the applicant's wellbeing because of the increasing, daily violence in Mexico. The applicant's uncle states that his sibling, the applicant's father, has resided in his home since the applicant left; has not found stable employment in the applicant's absence; and has untreated medical conditions as he lacks money. The applicant's uncle also indicates that he is unable to provide more assistance to his sibling as he has a wife, two children, and household expenses. Additionally, the record includes a psychological evaluation of the applicant's father dated January 9, 2013, indicating the applicant's father "meets the diagnostic criteria for Major Depressive Disorder, Recurrent, Moderate ... he endorses anxiety symptoms in the form of somatic complaints ... his depressive symptoms are becoming more debilitating to his everyday [sic] activities." The evaluation recommended the applicant's father seek a psychiatric evaluation as medication intervention "may be the best course of treatment." The evaluation further recommends psychoeducation and the development of a skillset the applicant's father could use to manage his daily activities.

The AAO finds the record is sufficient to establish the applicant's parent has been experiencing hardship in the applicant's absence as the applicant plays an essential role in assisting his father with his daily needs as well as his emotional and financial wellbeing, and due to the current conditions in Mexico. In its latest travel warning for Zacatecas, Mexico, where the applicant currently resides, the U.S. Department of State indicates, "defer non-essential travel within the state of Zacatecas to the area bordering the states of Aguascalientes, Coahuila, Durango, and Jalisco and exercise caution in the interior of the state including the city of Zacatecas. The regions of the state bordering Durango and Coahuila as well as the cities of Fresnillo and Fresnillo-Sombrete and surrounding area are particularly dangerous. The northwestern portion of the state of Zacatecas has become notably dangerous and insecure. Robberies and carjackings are occurring with increased frequency and both local authorities and residents have reported a surge in observed [Transnational Criminal Organizations] activity. This area is remote, and local authorities are unable to regularly patrol it or quickly respond to incidents that occur there." *Travel Warning, Mexico*, issued July 12, 2013. And, although the record does not include evidence of the applicant's father's self-reported conditions of gastritis and arthritis, the record does establish he continues to receive treatment for a back and spinal-related condition that resulted in short-term disability. Accordingly, the AAO finds, in the aggregate, the applicant's parent would suffer extreme hardship upon separation from the applicant.

Additionally, the applicant's father indicates he is unable to relocate to Mexico as he does not have health insurance there, and he is only "working occasionally in various odd jobs"; and thereby, he cannot afford the treatment for his medical conditions.

The AAO finds the record is sufficient to establish the applicant's father would experience hardship if he were to relocate to Mexico to be with the applicant. As mentioned previously, the AAO notes the travel warning for Zacatecas, Mexico, where the applicant and his father would reside with the applicant's mother and siblings. Also, he has maintained his lawful permanent resident status for almost 23 years in the United States, where he has purchased property and continues to receive medical treatment and has been recommended to receive a psychiatric evaluation. Accordingly, the AAO finds, in the aggregate, the applicant's parent would suffer extreme hardship if he 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-Moralez*, 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.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

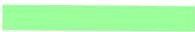
The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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 BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen parent, familial ties, the existence of real property, 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.



(b)(6)

NON-PRECEDENT DECISION

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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.