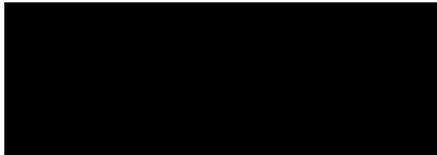


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

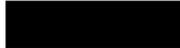


U.S. Citizenship  
and Immigration  
Services



HL5

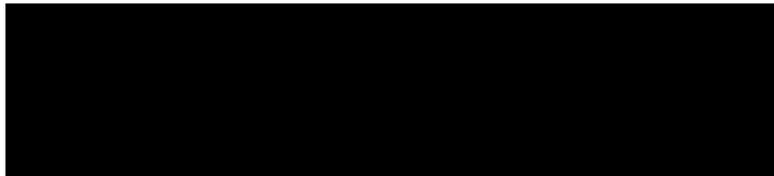
Date: Office: MEXICO CITY, MEXICO  
**AUG 23 2011**

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. section 1182(a)(9)(B)(v), and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Mexico City, Mexico. The application was subsequently denied by the Administrative Appeals Office (AAO) on appeal. The AAO will sua sponte reopen the appeal and sustain the waiver.

The applicant is a native and a citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). He was also found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of 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 ten years of his last departure. He is the son of a lawful permanent resident (LPR). The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Acting District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 4, 2008. The AAO reviewed the decision and denied the appeal in a decision dated May 13, 2011.

On appeal, counsel for the applicant asserts the Acting District Director failed to consider all of the hardship factors in the aggregate, and that the applicant's spouse will experience extreme hardship.

The record contains, but is not limited to, the following evidence: a statement from counsel; a statement from the applicant's mother; copies of newspaper articles; a copy of a document from the [REDACTED] dated July 28, 2008; a copy of a translated death certificate for the applicant's brother; copies of newspaper articles discussing the violence in Mexico and the death of the applicant's brother; and copies of the applicant's mother's permanent resident and social security cards.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

(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.

....

The record establishes that the applicant entered the United States without inspection in August 2001 and remained until he departed in December 2002.<sup>1</sup> As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is 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.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) In general. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

The record indicates that the applicant attempted to enter the United States with a B2 visa and false work documents when entering the United States in 1993. Thus the applicant attempted to enter the United States by willfully misrepresenting a material fact and is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States

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<sup>1</sup> The AAO notes that the applicant's Form I-601 fails to clearly state his periods of unlawful presence. The applicant listed a period of unlawful presence from "2001-2002" and from August 2002 to December 2002. If the applicant's 2001 to 2002 period of unlawful presence was over one year then he would be inadmissible under section 212(a)(9)(C) for having previously accrued a year of unlawful presence and then entering without inspection (which he did in August 2002). The record contains inconsistent evidence regarding his periods of unlawful presence, but the applicant has not shown that he accrued less than one year of unlawful presence for the current proceeding, and as such, he remains inadmissible under section 212(a)(9)(B)(i)(II).

of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The AAO will review the applicant's waiver request under section 212(i) as any waiver granted under that section will also waive the applicant's inadmissibility under section 212(a)(9)(B).

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 mother 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 at 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.

Counsel for the applicant asserts on appeal that the applicant’s mother suffers from medical problems and that relocating to Mexico and disrupting her continuity of care would result in extreme hardship to her. *Statement in Support of Appeal*, July 31, 2008. He explains that she is at an advanced age and has significant immediate family ties in the United States.

An examination of the record confirms that the applicant’s mother is now 80 years old. There is a statement from [REDACTED] stating that the applicant’s mother suffers from systemic hypertension, currently takes several medications for her high blood pressure and needs to remain close to her doctors for close monitoring.

These factors weigh heavily in an aggregate evaluation of the hardships that would beset the applicant’s mother if she were to relocate. The physical and medical impacts of relocating to Mexico, as well as the separation from her family ties in the United States, are sufficient to establish that she would experience hardships beyond the normal impacts of relocation, and as such constitute extreme hardship.

Counsel notes that the applicant’s mother would be unable to avoid the emotional hardship of separation from her son at her advanced age. He explains that she is 80 years old, suffers from serious medical conditions and would face difficulty visiting her son in Mexico.

The applicant's mother has submitted a statement revealing that she is extremely worried about the applicant residing in Mexico because she has already had one son who was assassinated while residing in Mexico.

The applicant has included newspaper clippings which indicate that his brother was shot and killed in Mexico. The AAO notes that this would present a substantial emotional impact on the applicant's mother, as she has already lost one of her children to the violent conditions in Mexico.

As noted above, the record contains a statement from [REDACTED] stating that the applicant's mother suffers from systemic hypertension, currently takes several medications for her high blood pressure and needs to remain close to her doctors for close monitoring. This evidence is sufficient to establish that the applicant's mother has significant medical issues and the AAO will consider the impact on the applicant's mother in an aggregate determination of the impacts on her.

The evidence in the record with regard to the applicant's mother's medical condition is also sufficient to corroborate that she would have problems visiting her son in Mexico if he were not admitted, due both to her age, the dangerous conditions discussed in the submitted articles and her medical conditions which require close monitoring.

When these hardships are examined in the aggregate, they are sufficient to establish that the applicant's mother would experience uncommon hardship upon separation from the applicant. As the applicant has established that a qualifying relative will experience extreme hardship upon relocation and separation, the AAO may now consider whether he warrants a waiver as a matter of discretion.

The AAO additionally finds 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 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).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 AAO finds that the unfavorable factors in this case include the applicant's misrepresentation and unlawful presence. The favorable factors in this case include the presence of the applicant's mother, the hardship she would experience due to his inadmissibility, his other family ties in the United States and the lack of any criminal record while residing in the United States. The favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The director's decision will be withdrawn and the appeal will be sustained.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met that burden. Accordingly, the appeal will be sustained.

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