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



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



#5

DATE: JUN 06 2012

Office: MEXICO CITY, MEXICO

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and under 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 Field Office Director, Mexico City, Mexico. The matter 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation of a material fact, and 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 more than one year and seeking admission within ten years of her last departure from the United States. The applicant's spouse and two of her children are U.S. citizens, and she seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated March 31, 2010.

On appeal, counsel details the applicant's spouse's hardship factors. *Memorandum in Support of Appeal*, dated April 29, 2010.

The record includes, but is not limited to, counsel's memorandum, the applicant's and her spouse's statements, statements from the applicant's children, statements from school teachers and counselors, a temporary suspension letter from the applicant's spouse's employer and a psychological evaluation of the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States with another person's passport and visa in December 1992 and departed the United States in April 2008. Therefore, the applicant accrued unlawful presence from April 1, 1997, the effective date of unlawful presence provisions under the Act, until April 2008, when she departed the United States. She is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission within ten years of her April 2008 departure. In addition, as the applicant entered the United States with a passport and visa issued to another person, she is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by willful misrepresentation of a material fact.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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 Act is inadmissible.

Section 212(i) of the Act provides that:

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

Section 212(a)(9)(B) 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.

....

- (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.

Section 212(a)(9)(B)(v) and section 212(i) waivers of the bars to admission resulting from sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act are dependent first upon a showing that the bars would impose extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is considered in section 212(a)(9)(B)(v) and section 212(i) waiver proceedings only to the extent that that it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel states that if the applicant's spouse relocates to Mexico, he would be forced to leave his career, home, health insurance and family; he is currently under treatment for deteriorating health and he would be unable to receive that treatment in Mexico; he has not lived in Mexico for 20 years; he would not be able to support his children in Mexico; there are vast problems with drug violence and devastating pollution in Mexico; his children primarily speak English and would not get educational opportunities in Mexico or find acceptance in local Mexican communities, which would restrict their future opportunities; and sanitary and housing conditions are deplorable in Mexico.

The applicant's spouse states that he cannot relocate to Mexico because he must remain in the United States in order to support his family. He also contends that the applicant resides in a dangerous place, Durango-Nuevo Ideal, where she can be killed or injured at any time. The AAO notes that the February 8, 2012 U.S. Department of State Travel Warning for Mexico details general safety issues and specifically mentions safety issues in Durango. It states, in pertinent part:

Durango: You should defer non-essential travel to the state of Durango. Between 2006 and 2010, the number of narcotics-related murders in the State of Durango increased dramatically. In 2011 several areas in the state continue to experience high rates of violence and remained volatile and unpredictable.

In the psychological evaluation of the applicant's spouse submitted for the record, the psychologist who assessed the applicant's spouse states that during their interview, the applicant's spouse expressed concern that, in Mexico, he and his family would not have a place to live and that there would be no way to provide his children with a proper education and care.

In considering the record, the AAO notes the applicant's residence in Durango and finds it reasonable to conclude that the applicant and his children would join her there if they moved to Mexico. Accordingly, we have taken note of the travel warning for Mexico and its discussion of the serious safety issues in Durango. We also acknowledge that at 58 years-of-age and after more than 20 years of absence from the Mexican job market, the applicant would experience difficulty obtaining employment in Mexico. We further observe that the applicant's children are primarily English speakers and note his concerns regarding his inability to provide them with educational opportunities in Mexico. When the hardship factors just indicated and the hardships normally created by relocation are considered in the aggregate, the AAO finds that the applicant's spouse would suffer extreme hardship if he relocates to Mexico.

If the applicant's spouse remains in the United States, counsel asserts that he would experience the loss of relations with the applicant; the loss of the applicant's income and motherly support for their children; the loss of family unity; and the loss of the home they purchased together. Counsel also

contends that the applicant's spouse worries about the applicant who is at risk in Mexico due to lack of a job, family, health insurance and home; and what would happen to his children if he gets sick.

The applicant's spouse states that it is very hard to find a good and responsible babysitter for his children; he works full-time and does not have much time to cook for, play with or talk to his children; he does not sleep well; it breaks his heart to see his children without their mother; and his children see a therapist at school. He also reports he is having accidents at work due to a lack of concentration and focus, as well as a lack of sleep, and that he is about to lose his job and has already been suspended. He asserts that the applicant is living in a dangerous place, Durango-Nuevo Ideal, where she can be killed or injured any time; and that his children are suffering in the absence of their mother

The record contains statements from the applicant's children. The applicant's older child relates the difficulties that he and his younger brother are experiencing without the applicant. The record includes letters from school teachers and counselors that report the applicant's two children have been experiencing academic and emotional difficulties since being separated from the applicant.

A psychologist who evaluated the applicant's spouse states that the applicant's spouse feels overwhelmed by his responsibility for his children; he spends most of the day worrying that the applicant will not be allowed back into the United States, he cannot sleep through the night and he feels fatigued during the day; he has no desire to socialize; he is plagued with feelings of worthlessness, insecurity and guilt; he has "always" suffered from symptoms of depression; his father was physically abusive; his father disappeared and he became the head of the household; he had marriage problems with his first spouse; the children are affected by separation from the applicant and are failing several of their classes at school; hardship to the children would exacerbate the applicant's spouse's hardship; his work has begun to suffer; and the applicant is worried about him. The psychologist states that the applicant's spouse's score on the Beck Depression Inventory is indicative of an extremely severe level of depressive symptoms and that he appears to meet the criteria for Generalized Anxiety Disorder, Dysthymia and Major Depression, Severe, With Melancholic Features.

A memorandum contained in the record indicates that the applicant's spouse was given a three-day suspension from his employment as a bus driver for having caused a "preventable accident" on January 13, 2010. The memorandum, signed by the Chairman, Accident Review Committee of the applicant's spouse's employer, advises him to increase his level of concentration when he is driving or his "driving carrier [sic] will be in jeopardy."

The AAO finds the record to contain sufficient evidence to establish that the applicant's spouse is experiencing significant emotional hardship due to his separation from the applicant and that his emotional problems are negatively affecting his job performance. We also acknowledge his legitimate fears for the applicant's safety in Mexico and his concerns regarding the emotional difficulties being experienced by his two youngest children. When these specific hardship factors and the hardships normally created by separation are considered in the aggregate, the AAO finds that

the applicant's spouse would suffer extreme hardship if the waiver application is denied and he remains in the United States.

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, "[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 case are the applicant's misrepresentation and unauthorized residence in the United States.

The favorable factors include the applicant's U.S. citizen spouse and children, the extreme hardship to her spouse if the waiver application is denied, the absence of a criminal record, and the statements in the record indicating the applicant's active involvement in her children's education and her importance to her family.

The AAO does not condone the immigration violations committed by the applicant. Nevertheless, we conclude that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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