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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

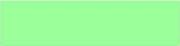


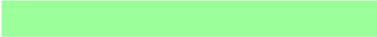
U.S. Citizenship
and Immigration
Services



Date: NOV 14 2014

Office: ALBUQUERQUE

FILE: 

IN RE : Applicant: 

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

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 Field Office Director, Albuquerque, New Mexico, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, the prior AAO decision will be withdrawn, and the underlying appeal will be sustained.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 more than one year and again seeking admission within 10 years of her last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated September 28, 2012.

On appeal we determined that the record established that the applicant's spouse would experience extreme hardship if he were to relocate to Mexico, but failed to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. *See Decision of the AAO*, dated May 12, 2014.

In support of the motion counsel for the applicant submits a brief, letters from family and friends of the applicant in Mexico, and country information for Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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) of the Act provides, in pertinent part:

- (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:

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.

The field office director found the applicant inadmissible for having accrued unlawful presence of more than one year, as she stated at her interview for her Application to Adjust Status (Form I-485) that she entered the United States in February 1998 as a B-2 visitor and remained beyond her authorized stay until departing in December 2008. The director also found the applicant inadmissible for misrepresentation as she stated that she had obtained a visa to enter the United States on July 19, 2009 by claiming she had been living in Mexico when in fact she had been living in the United States. On appeal counsel did not contest the findings of inadmissibility.

A waiver of inadmissibility under section 212(i) 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. The applicant's 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

As noted on appeal, the record contains references to hardship the applicant's child would experience if the waiver application were denied. In the present case, the applicant's spouse is the only qualifying relative and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse. Hardship to an alien's children is not included as a factor to be considered in assessing extreme hardship under sections 212(i) or 212(a)(9)(B)(v) of the Act.

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. *Salcido-Salcido v. INS*, 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.

As noted above, on appeal we found that the record established that the applicant's spouse would experience extreme hardship if he were to relocate to Mexico to reside with the applicant. As such, this criterion will not be addressed on motion.

However, in the same decision we determined that the record failed to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. On appeal counsel had asserted that the applicant's spouse suffered emotionally from his father's violence toward his mother and by his mother's death, and that he was further traumatized by his divorce and separation from his children. An assessment by a psychotherapist stated that the spouse is depressed over the prospect of separation from the applicant and is anxious about financial consequences to the family. It stated that the spouse had often witnessed domestic violence by his father against his mother with the feeling that he could not stop it, and now fears that separating from the applicant will trigger feelings of helplessness and will cause depression like he suffered after his divorce, separation from his children, and death of his mother. The spouse stated that the applicant had provided support and security for him at a time when he was not working, became depressed and started drinking heavily. We found that the spouse's statement and the assessment provided did not establish that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible and that it had not been established that the applicant's spouse would be unable to travel to Mexico to visit the applicant. Counsel also asserted that the spouse is in a dire financial situation as the applicant is the only provider, and the spouse stated that if the applicant leaves it will be difficult for him to pay rent and bills. We found that although the record reflects the applicant is currently the primary financial support, there is no indication in the record that the qualifying spouse is in any way unable to work.

On motion counsel states that the applicant's family have received escalating threats by people who do not want a cousin's kidnapping made public and that threats have turned into demands for money, and armed men have questioned the family about whether the applicant sends money. Counsel states that violence has escalated across the country and that [REDACTED] is the most dangerous state for women. Counsel asserts that the applicant's spouse would be in constant fear for the applicant's safety in [REDACTED]. On motion counsel also re-submitted a 2010 Mexican police report and a birth certificate for the missing man, indicating he is related to the applicant's father.

The applicant states that it would be difficult for her spouse without her, especially getting her son to school and to activities while working to pay the bills and have food. The applicant states that her spouse has had drinking and drug problems, and that if it happened again he would not be able to get out of it alone. She further states that Mexico is dangerous and she does not want her son in danger of being kidnapped. She states that her family has been threatened by unknown people since her father's cousin was kidnapped and that her father has been threatened when trying to learn what

happened. The applicant states that she sent her family a truck to help them, but unknown people then demanded to know where they got the money for a truck, and that her father has been threatened to have the applicant send money and another truck.

Letters from the family's neighbors indicate threatening persons coming to the family home and the applicant's sister writes that she and her husband left the town when they were being threatened for money because of their car business. The applicant's father states that the applicant sent a truck to help them get from one city to another, but now unknown people are asking where they got the money and insist that the father call the applicant to send money. He writes that he is worried something might happen to the applicant and her son in Mexico.

In addition to country information and news accounts of violence in Mexico submitted by counsel we note that according to the U.S. Department of State crime and violence remain serious problems throughout the state of [REDACTED]. See Travel Warning-U.S. Department of State, dated October 10, 2014.

Here we find a review of the evidence in the record, when considered in its totality, reflects that the applicant's spouse would suffer extreme hardship were the applicant unable to reside in the United States. Given the general violence in the state of [REDACTED] and the direct threats to the applicant's family that she would likely also experience and the spouse's resulting fears for her safety, in addition to the spouse's history of psychological difficulties as detailed in the report by a psychotherapist, we find that the circumstances presented in this application rise to the level of extreme hardship if the spouse were separated from the applicant due to her inadmissibility.

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 states 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 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.* at 301.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and son would face if the applicant is not granted this waiver, her history of employment, letters of support from friends, and apparent lack of criminal record. The unfavorable factors in this matter are the applicant's accrual of unlawful presence and procuring admission to the United States through fraud or misrepresentation.

Although the applicant's immigration and criminal violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and 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 motion will be granted, the prior AAO decision will be withdrawn, and the underlying appeal will be sustained.