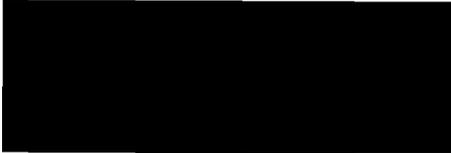


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



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



H6

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date: **DEC 20 2010**

IN RE:



APPLICATION:

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

ON BEHALF OF PETITIONER:



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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Mexico City, 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 under 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 a period of one year or more. The applicant is married to a U.S. Citizen and is the beneficiary of an approved petition for alien relative. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States and reside with his wife and children.

The acting district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated July 15, 2008.

On appeal, counsel for the applicant asserts that the applicant's wife is suffering extreme hardship since the applicant's departure from the United States, including emotional and psychological hardship resulting from their separation and financial hardship due to loss of the applicant's income and having to support her three children on her own. Counsel further claims that U.S. Citizenship and Immigration Services (USCIS) failed to consider the medical needs of the applicant's wife or children when assessing extreme hardship if they were to relocate to Mexico and states that they would suffer hardship in Mexico because they do not speak Spanish and would have difficulty adjusting to social and economic conditions in Mexico. *Notice of Appeal to the AAO (Form I-290B)*. In support of the waiver application and appeal counsel submitted affidavits and letters from the applicant's wife and daughters, affidavits from friends and family members, medical records for the applicant's wife and daughters, financial documents including bills and receipts for cash advance loans, school records and Individual Education Program documents for the applicant's daughters, evidence concerning a trip to Mexico by the applicant's wife and daughter to visit the applicant, copies of phone records, and documentation of the bona fide marriage of the applicant and his wife. The entire record was reviewed and 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.

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.

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 wife 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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).

Although 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.*

We observe that 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 *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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of the family relationship considered. For example, in *Matter*

of *Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; see also *U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The record reflects that the applicant is a thirty-nine year-old native and citizen of Mexico who resided in the United States from August 1997, when he entered without inspection, to July 2007, when he returned to Mexico. He is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of one year or more. The record further reflects that the applicant’s wife is a forty-three year-old native and citizen of the United States. The applicant currently resides in Aguascalientes, Mexico and his wife resides in Huntingburg, Indiana.

Counsel asserts that the applicant’s wife would suffer extreme hardship if she relocated to Mexico because she and her daughters suffer from medical and psychological conditions for which they are receiving care in the United States and would also have difficulty adjusting to conditions because they do not speak Spanish. In support of these assertions counsel submitted medical records for the applicant’s wife and daughters. The records indicate that the applicant’s wife underwent medically necessary gastric bypass surgery in 2009 and that she has “numerous

comorbid medical conditions including depression which are affected by stress.” *Letter from* [REDACTED] dated May 27, 2009. [REDACTED] further states,

Moreover, the upcoming surgery involves making many lifestyle changes. . . . Enlisting a support system is critical for this process and is a requirement of our program, and the upcoming surgery is medically necessary for [REDACTED] [REDACTED] and it is very important that she have her husband reunited with her family.

Psychological testing conducted in preparation for the applicant’s wife’s bariatric surgery concluded that she was “experiencing substantially more depressive symptoms than the typical medical patient,” and “stress, depression, and anxiety are considered triggers for relapse,” requiring the support of the applicant and other family members before and after surgery. *Letter from* [REDACTED] *Behavioral Counselor*, dated June 1, 2009. Other medical records indicate that the applicant’s wife has a history of depression and has been taking antidepressant medication since before 2006. Medical records for the applicant’s daughters, including a letter from their pediatrician, indicate that they are being treated for conditions including obsessive-compulsive disorder and attention deficit disorder and emotional problems due to the applicant’s absence. *Letter from* [REDACTED] dated March 17, 2010. [REDACTED] further states, “All three youngsters have exhibited a good deal of emotional acting out and mood change related to their father or stepfather’s absence.” School records further indicate that the two younger children are receiving special education services due to a learning disability and a speech impediment.

The applicant’s wife and her three daughters have resided in the United States their entire lives and letters from friends and family members establish that they have strong ties to the United States, including close relatives and friends that live in proximity to them and provide them with financial and emotional support. Because of her strong ties to the United States and lack of ties to Mexico and her medical and psychological conditions, for which she is receiving treatment in the United States, the applicant’s wife would experience hardship beyond the common results of inadmissibility or removal if she relocated to Mexico. These hardships include separation from her family members in the United States and the effects of hardship to her daughters if they relocated to Mexico. Due to her history of depression, the resulting emotional and psychological hardship, when combined with economic hardship and a reduced standard of living, would rise to the level of extreme hardship to the applicant’s wife if she relocated to Mexico with the applicant.

Counsel further asserts that the applicant’s wife is suffering emotional and financial hardship due to separation from the application. As noted above, the applicant’s wife suffers from depression, and letters from friends and family members state that she is struggling financially and must go to a food bank and take out cash advance loans to buy groceries and meet other financial obligations. The applicant’s wife states that she loves the applicant with all of her heart and her life has been like a nightmare since they have been separated. *Affidavit of* [REDACTED] [REDACTED] dated March 13, 2010. She further states that she has a hard time paying her bills and has had to borrow money from family and friends to feed the children and get to work, but many of

them have now been laid off and cannot lend her this money, so she has taken check advance loans and gone to the food bank every month.

In addition to evidence of the psychological and medical conditions of the applicant's wife and daughters, the record contains copies of receipts for several cash advance loans taken out by the applicant's wife at an extremely high interest rate from the [REDACTED] and credit card statements and past due bills. The evidence on the record establishes that the applicant's wife is experiencing financial hardship and is having difficulty paying her family's basic living expenses and she has a history of depression that appears to be exacerbated by separation from the applicant and the effects of the separation on her daughters. When considered in the aggregate, the emotional and psychological hardships caused by separation from her husband and the financial pressure of supporting herself and her daughters amounts to hardship beyond the common results of inadmissibility or removal and rises to the level of extreme hardship for the applicant's wife if she remains in the United States without the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. 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(a)(9)(B)(v) 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-Moralez*, 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 adverse factors in the present case are the applicant's immigration violations, including his entry without inspection and unlawful presence in the United States. The favorable factors in the present case are the hardship to the applicant's wife and daughters the applicant's lack of criminal convictions or additional immigration violations.

The AAO finds that applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds 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.