

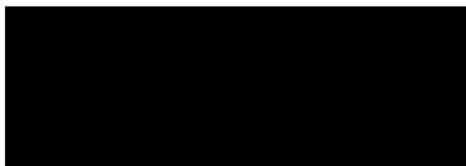
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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



#6

FILE:  Office: MEXICO CITY (CIUDAD JUAREZ) Date: NOV 03 2010

IN RE: Applicant: 

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 APPLICANT:

SELF-REPRESENTED

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, 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. She 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 her husband.

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 April 8, 2008.

On appeal, the applicant's husband asserts that their entire family is suffering hardship due to their separation and the applicant and his two sons are residing in a very poor environment in rural Tamaulipas where his children are unable to attend school. *Letter from [REDACTED] in Support of Appeal*. He further states that his two older children in the United States are helping him not to fall into a deeper depression, but his health is not good and both the applicant and their son in Mexico suffer from medical conditions and do not have access to adequate medical care there. *Letter from [REDACTED] in Support of Appeal*. He states that he must now support the applicant and their sons in Mexico and they are in debt and have lost their financial stability. *Letter from [REDACTED] in Support of Appeal*. In support of the appeal the applicant submitted a letter from her husband, school records for her two sons, medical records for the applicant, and letters from their pastor and from friends in support of the applicant. 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 husband 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 fifty-four year-old native and citizen of Mexico who resided in the United States from February 2000, when she entered without inspection, to February 2007, when she returned to Mexico. She 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 husband, whom she married on April 21, 1976, is a sixty year-old native and citizen of Mexico and Lawful Permanent Resident of the United States. The applicant currently resides in Mendez, Tamaulipas, Mexico with two of her children and her husband resides in Braunfels, Texas.

The applicant’s husband has been a Lawful Permanent Resident since December 1988 and has two adult children residing with him in Texas who he states provide him with emotional support since being separated from the applicant and their two younger children. He states that he has no ties to Mexico and for this reason the applicant and their sons are living in poor conditions on a ranch in rural Tamaulipas. A letter from the pastor of his church states that he and the applicant are good people who attended church there whenever possible. The AAO further notes that since the appeal was submitted, the U.S. Department of State has issued Travel Warnings for Mexico. The most recent Travel Warning states:

The Department of State has issued this Travel Warning to inform U.S. citizens traveling to and living in Mexico about the security situation in Mexico. The authorized departure of family members of U.S. government personnel from U.S. Consulates in the northern Mexico border cities of Tijuana, Nogales, Ciudad Juarez, Nuevo Laredo, Monterrey and Matamoros remains in place. However, based upon a security review in Monterrey following the August 20, 2010 shooting in front of the American Foundation School in Monterrey and the high incidence of kidnappings in the Monterrey area, U.S. government personnel from the Consulate General in Monterrey have been advised that the immediate, practical and reliable way to reduce the security risks for children of U.S. Government personnel is to remove them from the city. . . . This Travel Warning supersedes the Travel Warning for Mexico dated July 16, 2010 to note the changing security situation in Monterrey.

. . . .

General Conditions

Since 2006, the Mexican government has engaged in an extensive effort to combat drug-trafficking organizations (DTOs). Mexican DTOs, meanwhile, have been engaged in a vicious struggle with each other for control of trafficking routes. In order to prevent and combat violence, the government of Mexico has deployed military troops and federal police throughout the country. U.S. citizens should expect to encounter military and other law enforcement checkpoints when traveling in Mexico and are urged to cooperate fully. DTOs have erected unauthorized checkpoints, and killed motorists who have not stopped at them. In confrontations with the Mexican army and police, DTOs have employed automatic weapons and grenades. In some cases, assailants have worn full or partial police or military uniforms and have used vehicles that resemble police vehicles. According to published reports, 22,700 people have been killed in narcotics-related violence since 2006. The great majority of those killed have been members of DTOs. However, innocent bystanders have been killed in shootouts between DTOs and Mexican law enforcement or between rival DTOs.

Recent violent attacks and persistent security concerns have prompted the U.S. Embassy to urge U.S. citizens to defer unnecessary travel to Michoacán and Tamaulipas, to parts of Chihuahua, Sinaloa, Durango, and Coahuila, (see details below) and to advise U.S. citizens residing or traveling in those areas to exercise extreme caution.

Violence Along the U.S.-Mexico Border

Much of the country's narcotics-related violence has occurred in the northern border region. For example, since 2006, three times as many people have been murdered in Ciudad Juarez, in the state of Chihuahua, across from El Paso, Texas,

than in any other city in Mexico. More than half of all Americans killed in Mexico in FY 2009 whose deaths were reported to the U.S. Embassy were killed in the border cities of Ciudad Juarez and Tijuana.

Since 2006, large firefights have taken place in towns and cities in many parts of Mexico, often in broad daylight on streets and other public venues. Such firefights have occurred mostly in northern Mexico, including Ciudad Juarez, Tijuana, Chihuahua City, Nogales, Nuevo Laredo, Piedras Negras, Reynosa, Matamoros and Monterrey. Firefights have also occurred in Nayarit, Jalisco and Colima. During some of these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area.

The situation in northern Mexico remains fluid; the location and timing of future armed engagements cannot be predicted. U.S. citizens are urged to exercise extreme caution when traveling throughout the region, particularly in those areas specifically mentioned in this Travel Warning.

....

In recent months, DTOs have used stolen trucks to block major highways and thus prevent the military from responding to criminal activity, most notably in the area around Monterrey. Also in Monterrey, DTOs have kidnapped guests out of reputable hotels in the downtown area, blocking off adjoining streets to prevent law enforcement response. DTOs have also attacked Mexican government facilities such as military barracks and a customs and immigration post.

....

Travelers on the highways between Monterrey and the United States (notably through Nuevo Laredo and Matamoros) have been targeted for robbery that has resulted in violence and have also been caught in incidents of gunfire between criminals and Mexican law enforcement. Travelers should defer unnecessary travel on Mexican Highway 2 between Reynosa and Nuevo Laredo due to the ongoing violent competition between DTOs in that area. Criminals have followed and harassed U.S. citizens traveling in their vehicles in border areas including Nuevo Laredo, Matamoros, and Tijuana. U.S. citizens traveling by road to and from the U.S. border through Nuevo Leon, Coahuila, Durango, and Sinaloa should be especially vigilant. Criminals appear to especially target SUVs and full-size pick-up trucks for theft and car-jacking along these routes.

Continued concerns regarding road safety along the Mexican border have prompted the U.S. Mission in Mexico to impose certain restrictions on U.S. government employees transiting the area. Effective July 15, 2010, Mission employees and their families may not travel by vehicle across the U.S.-Mexico border to or from any post in the interior of Mexico. This policy also applies to employees and their families transiting Mexico to and from Central American posts. This policy does not apply to

employees and their family members assigned to border posts (Tijuana, Nogales, Ciudad Juarez, Nuevo Laredo, and Matamoros), although they may not drive to interior posts as outlined above. Travel is permitted between Hermosillo and Nogales, but not permitted from Hermosillo to any other interior posts. . . *U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Mexico, September 10, 2010.*

The AAO takes further notice that the level of drug-related violence in the state of Tamaulipas, where the applicant and her sons reside, has escalated significantly in recent months, with 72 migrants being murdered in August 2010 in the same area of Tamaulipas where the applicant resides. *See President Calderon condemns Mexico migrant killings, BBC News, August 26, 2010.*

In light of dangerous conditions in Tamaulipas, where the applicant currently resides with a relative, and due to his length of residence and ties to the United States and lack of ties to Mexico, the applicant's husband would suffer emotional and financial hardship, including threats to his safety, difficulty adjusting to conditions in Mexico, and separation from his family members and loss of his employment in the United States, that would rise to the level of extreme hardship if he relocated to Mexico.

The applicant's husband states that he is suffering emotional and financial hardship due to separation from the applicant, and further states that the applicant and his two sons are living in poor conditions and do not have access to adequate medical care, and his sons are not in school. Evidence on the record indicates that the applicant was receiving treatment for hypertension in Texas and was attending regular appointments with her physician every three months, and a letter from her physician states that her husband has been informed that it is very important that she continue with her medical treatment and medications. *See letter from [REDACTED] dated April 24, 2008.*

The applicant's husband states that he is suffering emotional and financial hardship and is concerned because the applicant and his sons do not have access to adequate medical care and live in a poor rural area where they must walk 2 miles to the nearest store and where his sons cannot attend school. The record further indicates that the applicant and her husband have been married for over thirty years and she currently suffers from hypertension that requires ongoing medical attention that her husband states she is not receiving in Mexico. In light of the escalating violence in the area of Tamaulipas where the applicant resides and the applicant's medical condition, the emotional hardship resulting from separation from the applicant and their two younger children and concern for their safety and well-being amounts to hardship beyond the common results of inadmissibility or removal and amounts to extreme hardship if the applicant's husband 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-Morales*, 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-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 adverse factors in the present case are the applicant's immigration violations, including her unlawful entry in February 2000 and her unlawful presence in the United States until February 2007. The favorable factors in the present case are the hardship to the applicant's husband and children, her family ties to the United States, including her older children, and the applicant's lack of a criminal record 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.