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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



U.S. Citizenship  
and Immigration  
Services

H6

[Redacted]

FILE:

[Redacted]

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: OCT 06 2010

IN RE:

Applicant:

[Redacted]

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,

Tariq Syed  
for

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 seeking readmission within ten years of his last departure from the United States, and section 212(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1182(a)(1)(A)(iii)(I), as an alien who was determined to have a physical or mental disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others.<sup>1</sup> The applicant is married to a United States citizen and the stepfather of a United States citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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), and section 212(g) of the Act, 8 U.S.C. § 1182(g), in order to reside in the United States with his United States citizen wife and stepchild.

In regards to the applicant's health related ground of inadmissibility, the District Director stated that the applicant's wife "has signed acknowledgement of the conditions prescribed in consultation with the Centers for Disease Control." *Decision of the District Director*, dated March 12, 2008. Additionally, the District Director recognized that the applicant's wife made arrangements for the applicant to attend alcohol treatment in the United States<sup>2</sup>; therefore, the record reflects that the District Director granted the applicant's 212(g) waiver. However, the District Director determined that the applicant was still inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The District Director found 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. *Id.*

On appeal, the applicant's wife states she has provided "medical records and history of family dependents that will be classified as an extreme hardship." *Form I-290B*, filed March 31, 2008.

The record includes, but is not limited to, a statement from the applicant's wife, a statement from the applicant in Spanish<sup>3</sup>, a letter from the applicant's wife's employer, a letter from [REDACTED] regarding the applicant's wife's grandson's medical conditions, medical documents for the applicant's

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<sup>1</sup> The AAO finds that the District Director erred in referring to section 212(a)(1)(A)(iii)(II) of the Act in his decision since the applicant was determined to be inadmissible to the United States pursuant to section 212(a)(1)(A)(iii)(I) of the Act.

<sup>2</sup> The AAO notes that the applicant's wife arranged for the applicant to attend treatment at A Turning Point, in Colorado Springs, Colorado.

<sup>3</sup> Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As the statement from the applicant is in Spanish and is not accompanied by an English-language translation, the AAO will not consider it in this proceeding.

wife's grandson, and tax documents. The entire record was reviewed and considered, with the exception of the Spanish language statement, in arriving at 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.
  - .....
- (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.

In the present case, the record indicates that the applicant was apprehended attempting to enter the United States on March 8, 1998. The applicant was again apprehended after entering the United States without inspection on March 16, 1998 and March 18, 1998. Subsequently, the applicant entered the United States without inspection. On January 21, 2006, a Notice to Appear (NTA) was issued. On January 31, 2006, an immigration judge granted the applicant voluntary departure to depart the United States by February 9, 2006. On February 2, 2006, the applicant departed the United States.

The AAO notes that evidence in the record establishes that on or about June 24, 2005 and September 2, 2005, the applicant was convicted of illegal entry, in violation of 8 U.S.C. § 1325. However, the applicant's convictions are not crimes involving moral turpitude. Therefore, the AAO finds that the applicant is not inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude.

The applicant accrued unlawful presence from sometime after March 1998, the date he entered the United States without inspection, until January 31, 2006, when an immigration judge granted the applicant voluntary departure. The applicant is seeking admission into the United States within ten years of his February 2, 2006 departure. The applicant is, therefore, 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.

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, his stepdaughter, or his grandchildren 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 United States Citizenship and Immigration Service (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 (Board) 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).

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.*

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 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 first prong of the analysis addresses hardship to the applicant’s spouse if she relocates to Mexico. In an undated statement, the applicant’s wife states she cannot move to Mexico because her children and grandchildren need her. In a letter dated March 24, 2008, [REDACTED] states the applicant’s wife cares for her mother, children, and grandchildren, and she spends “numerous hours each week aiding [her] other family members.” In a letter dated March 25, 2008, [REDACTED] states the applicant’s wife’s grandson, [REDACTED], “had a bit more than his share of typical health problems, mostly related to acute respiratory infections” and her other grandson, [REDACTED], “has also had a number of respiratory infections.” The AAO notes that the record contains medical documentation that the applicant’s wife’s grandson, [REDACTED] was admitted into the hospital on January 6, 2007, January 10, 2007, and April 6, 2007. Additionally, the record establishes that the applicant’s wife has asthma. [REDACTED] indicates that the applicant’s stepdaughter resides with the applicant’s wife and “is dependent on her for help with child care, and transportation for routine and acute medical care.” [REDACTED] also states the applicant’s stepdaughter and her children have “become very dependent on help from the grandparents.” The AAO notes the applicant’s spouse’s concerns for her children and grandchildren.

The AAO acknowledges that that the applicant’s wife is a native of the United States and her family resides in the area. The AAO notes that the applicant is currently residing in the northwestern Mexican state of [REDACTED]. *See Form I-601*, filed June 22, 2007. On September 10, 2010, the U.S. Department of State issued a travel warning to United States citizens thinking of traveling to Mexico. The AAO notes that this warning is primarily focused on northern Mexico, i.e., along the United States-Mexico border. The travel warning states “[r]ecent violent attacks and persistent security concerns have prompted the U.S. Embassy to urge U.S. citizens to defer unnecessary travel to...parts of [REDACTED]...and to advise U.S. citizens residing or traveling in those areas to exercise extreme caution.” Additionally, the travel warning states “[t]he situation in the state of [REDACTED] is of special concern.... U.S. citizens should defer unnecessary travel to Ciudad Juarez and to the Guadalupe Bravo area southeast of Ciudad Juarez. U.S.

citizens should also defer travel to the northwest quarter of the state of [REDACTED].... In both areas, American citizens have been victims of drug related violence. There have been recent incidents of serious narcotics-related violence in the vicinity of the [REDACTED]” The travel warning states “[t]he 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.” The AAO notes that the situation in parts of Mexico, including the northwestern state of Chihuahua, has become unstable and unsafe for United States citizens.

Based on the travel warning issued to United States citizens, the assistance provided by the applicant's spouse to her family, her grandson's medical issues, her own medical issues, and the emotional hardship of being separated from her family, the AAO finds that the applicant's wife would suffer extreme hardship if she were to relocate to Mexico to be with the applicant.

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States without the applicant, the applicant's wife states she and the applicant have purchased a mobile home and two vehicles, and since the applicant has been in Mexico, she has “suffered financially and emotionally.” [REDACTED] states the applicant's wife has been working for his company for more than two years and she usually works 50-60 hours a week. The applicant's wife states she works 7 days a week in order to make her house and vehicle payments. The AAO notes that the record establishes that the applicant's wife reported [REDACTED] in wages for 2007, which is below the poverty line for a family of four. The applicant's wife claims that even though she works everyday, she still receives disconnect notices and she is afraid that she will lose everything. She also claims that she has been hospitalized on two separate occasions and has more than [REDACTED] in medical bills. [REDACTED] states the applicant's stepdaughter and her children have “become very dependent on help from the grandparents” and “the rest of this family is clearly dependent upon [the applicant's] assistance.” Based on the applicant's spouse's financial issues, emotional issues, medical issues, her daughter's and grandchildren's dependence upon the applicant, and the normal effects of separation, the AAO finds that the applicant's wife would experience extreme hardship if the applicant's waiver request were to be denied and she remained in the United States.

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).

The adverse factors in the present case are the applicant's attempted entry with inspection, his entries without inspection, his unauthorized employment, and his period of unlawful presence for which he now seeks a waiver. The favorable and mitigating factors are the applicant's United States citizen wife, stepdaughter, and grandchildren, and the extreme hardship to his wife if he were refused admission.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.