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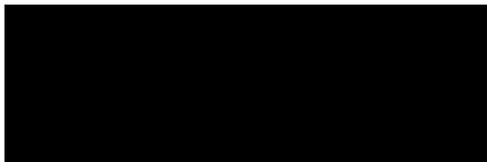
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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090



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

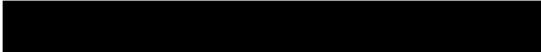
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Date: **AUG 05 2011**

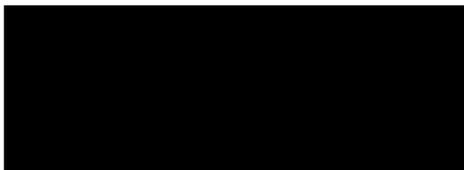
Office: CIUDAD JUAREZ

FILE: 

IN RE: 

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

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,

A handwritten signature in cursive script that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the application will be approved.

The applicant is a native and citizen of Mexico. The director found the applicant 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 section 212(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1182(a)(1)(A)(iii)(I), as an alien classified as having a physical/mental disorder with associated behavior that may pose, or has posed, a threat to the property, safety or welfare of the alien or others. The applicant seeks waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(g) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(g). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the applicant demonstrated extreme hardship to his wife based on considering hardship factors cumulatively. Counsel maintains that the applicant's spouse has anxiety and depression due to her husband's leaving the United States. Moreover, counsel states that the applicant's son was diagnosed with an adjustment reaction condition due to his father's absence. Counsel avers that the applicant's crimes are alcohol-related and that he has undergone rehabilitation and taken steps to overcome his disease, and has attended counseling and mentored others. Counsel declares that the applicant and his wife need each other. Counsel maintains that the applicant's wife endures extreme hardship in raising her small child alone and in providing for their livelihood.

We will first address the finding of inadmissibility under section 212(a)(9)(B) of the Act, which 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.

....

(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.

U.S. Citizenship and Immigration Service (USCIS) records reflect that the applicant entered the United States without inspection in August 1996, and remained in the country until August 2007. He therefore began to accrue unlawful presence from April 1, 1997, the date on which the unlawful presence provisions went into effect, until August 2007, when he left the country and triggered the ten-year bar, rendering him inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The waiver for unlawful presence is under section 212(a)(9)(B)(v) of the Act, which section provides that:

- (v) Waiver. – The Attorney General [now Secretary, 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 Attorney General [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.

The waiver under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s U.S. citizen spouse. Once extreme hardship is established, it is one of the favorable factors to be considered in determining 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, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In rendering this decision, the AAO will consider all of the evidence in the record such as a declaration, letters, medical records, court documents, invoices, birth certificates, photographs, and other documentation.

In her declaration dated July 25, 2007, the applicant’s wife states that she does not work full time and that her husband supports their family. She states that separation from him would be emotionally devastating because they have been together for nine years. The applicant’s wife avers that she will have to support her husband if he remained in Mexico because he has been away from Mexico for many years and it will take time for him to find a stable job. The applicant’s wife indicates that she does not wish to live in Mexico as her life is in the United States, where she has lived for more than 16 years. She states that in Mexico there is low income, insecurity, and “the not knowing what the future will be like tomorrow,” and she will be traumatized in having to give up her

way of life in the United States. Additionally, the applicant's wife states in the letter dated October 24, 2007 that since her husband has been away for three months her son has been angry, and has lost his appetite and has trouble sleeping. Moreover, she indicates that in order to pay for their basic needs she has two jobs. Furthermore, the applicant's wife states that her husband's assistance is needed so she can become a registered dietician. We note that the record shows the applicant as owing a house in Concord, California.

In regard to the mental health of the applicant's wife, we note that the letter dated March 4, 2009 by [REDACTED] a licensed clinical social worker, states that since December 15, 2008 she has provided weekly therapy to the applicant's wife for chronic anxiety and depression caused by separation from the applicant. [REDACTED] states that the applicant's wife takes sleep medication and was to be evaluated for anti-depressant medication. She avers that the applicant's wife and five-year-old son have had problems since she began raising him alone. [REDACTED] indicates that the applicant's son has had "mood shifts and some behavioral regression related to separation from his father," and that the applicant's wife obtained professional development guidance for his behavior. [REDACTED] further states that the applicant's wife dropped out of community college in order to work two jobs so that she could support herself and her son; however, her long work hours have exacerbated her son's behavior. Lastly, she states that the applicant's wife had to move in with extended family, and this has created considerable tension in her family life.

Furthermore, we observe that the undated letter by a physician with Contra Costa Health Services avers that the applicant's wife's separation from her husband has caused "stress and anxiety in her life leading to depression and necessitating the use of medications."

Finally, in regard to the applicant's son, we take note of the letter by [REDACTED] dated November 5, 2008, in which she conveys that the applicant's son was diagnosed with an adjustment reaction on August 15, 2008, and that his mother was advised to have him seen at a mental health center.

The asserted hardship factors are the emotional and financial hardship to the applicant's wife if she remains in the United States without her husband. The submitted letters by the licensed social worker and the applicant's wife's doctor convey that the applicant's wife has had ongoing anxiety and depression since her husband left the United States. In addition, the licensed social worker attributes the applicant's wife's mental health problems to multiple factors: being a single parent to a young son with behavioral problems, having to spend long hours at two jobs, and moving in with her extended family. We find that the asserted emotional hardship of the applicant's wife accords with the submitted evidence. Thus, the AAO finds the applicant has demonstrated that his wife will experience extreme hardship if she remains in the United States without him.

Moreover, we find that the applicant's wife will also experience extreme hardship if she joined her husband to live in Mexico. The applicant's wife expresses anxiety in having to leave the United States, where she has lived for 16 years, in order to live in Mexico, where her way of life and security will be jeopardized. In view of the applicant's wife's anxiety and depression due to her

present situation, we believe that she would endure significant hardship in having to adjust to life in Mexico, particularly because the record suggests that the applicant and his wife have held low-paying, menial jobs (painter and cashier) in the United States and do not appear to have the knowledge or skills required to secure a job beyond that which they have always held. And we take note that the applicant's husband has not been able to financially assist his wife from Mexico. Thus, the AAO finds that it is very likely that the applicant and his wife will struggle to find jobs in Mexico that will provide an adequate income. When the hardship factors are considered together, we find they establish the applicant's wife will endure extreme hardship if she lived in Mexico.

Based upon the record before the AAO, the applicant in this case establishes extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(i)(II) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

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).

Id. at 301.

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 instant case are the applicant's entry without inspection into the United States, his unlawful presence, his engaging in any unauthorized employment, and his criminal conviction in California for driving under the influence in 1999. The favorable factors are the extreme hardship to the applicant's wife and the hardship to his young son; his enrollment in Future Solutions in California; the passage of 11 years since the applicant's driving under the influence conviction, and the applicant's participation in a rehabilitation program in Mexico, as stated in the

letter by [REDACTED] We take notice that [REDACTED] further states that the applicant was an intern in the Center of Recuperation and Rehabilitation for Alcoholism and Drug Addiction in Michoacan, Mexico for three months, and that the applicant has continued with his therapy every Saturday: "up to this date, February 19, 2009, he still coming [sic], and is following the program."

When we consider and balance the favorable and unfavorable factors, we find that in the favorable factors clearly outweigh the adverse factors. Therefore, we find that the grant of a waiver in the exercise of discretion is warranted in this case.

Lastly, the record reflects that the applicant was determined to be inadmissible under section 212(a)(1)(A)(iii)(I) of the Act as an alien classified as having a physical/mental disorder with associated behavior that may pose, or has posed, a threat to the property, safety or welfare of the alien or others.

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

(a) Classes of Aliens Ineligible for Visas or Admission.--Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.--

(A) In general.--Any alien-

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General [now Secretary of Homeland Security])—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others . . . is inadmissible.

(B) Waiver authorized.--For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

The record reflects that the director based the finding of inadmissibility on the United States Centers for Disease Control and Prevention (CDC) certification dated July 7, 2007, in which it stated that the applicant had a Class A medical condition, alcohol abuse. The panel physician who conducted the applicant's medical examination referred the applicant to a psychologist for an evaluation after he reported that he was arrested for an alcohol-related offense in 2000. The psychologist classified the applicant as having a Class A medical condition, Alcohol Abuse, with associated Harmful Behavior. The director found the applicant inadmissible under section 212(a)(1)(A)(iii) of the Act on this basis.

Regulations at 8 C.F.R. § 212.7(b) govern aliens with certain mental conditions, who are eligible for

immigrant visas but require the approval of waivers of grounds of inadmissibility. The regulations require that the applicant submit the waiver application and a statement to the appropriate USCIS office indicating that arrangements have been made to provide the alien's complete medical history, including details of any hospitalization or institutional care or treatment for any physical or mental condition; the alien's current physical and mental condition, including prognosis and life expectancy; and a psychiatric examination. 8 C.F.R. § 212.7(b)(4). "For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery." *Id.* The medical report must then be forwarded to the U.S. Public Health Service for review. *Id.* These regulations further provide:

(ii) *Submission of statement.* Upon being notified that the medical report has been reviewed by the U.S. Public Health Service and determined to be acceptable, the alien or the alien's sponsoring family member shall submit a statement to the consular or [USCIS] office. The statement must be from a clinic, hospital, institution, specialized facility, or specialist in the United States approved by the U.S. Public Health Service. The alien or alien's sponsor may be referred to the mental retardation or mental health agency of the state of proposed residence for guidance in selecting a post-arrival medical examining authority who will complete the evaluation and provide an evaluation report to the Centers for Disease Control. The statement must specify the name and address of the specialized facility, or specialist, and must affirm that:

(A) The specified facility or specialist agrees to evaluate the alien's mental status and prepare a complete report of the findings of such evaluation.

(B) The alien, the alien's sponsoring family member, or another responsible person has made complete financial arrangements for payment of any charges that may be incurred after arrival for studies, care, training and service;

(C) The Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA. 30333 shall be furnished:

(1) The report evaluating the alien's mental status within 30 days after the alien's arrival; and

(2) Prompt notification of the alien's failure to report to the facility or specialist within 30 days after being notified by the U.S. Public Health Service that the alien has arrived in the United States.

(D) The alien shall be in an outpatient, inpatient, study, or other specified status as determined by the responsible local physician or specialist during the initial evaluation.

The record does reflect that the applicant meets the requirements for a waiver of inadmissibility under section 212(g) of the Act. The record contains a CDC form 4,422-1, Statements in Support of Application for Waiver of Inadmissibility. Part I of CDC form 4,422-1 reflects that the Department

of Health and Human Services Public Health Service (PHS) received the required medical documentation regarding the applicant's present condition. The PHS reviewing official, [REDACTED], Director, Division of Global Migration and Quarantine, National Center for Infectious Diseases, classified the applicant as having a Class A medical condition, Alcohol Abuse, which renders him inadmissible under section 212(a)(1)(A)(iii)(I). Parts II and III of CDC form 4,422-1 have been completed, as required in 8 C.F.R. § 212.7(b)(4)(ii). Therefore, the AAO finds that the applicant has established eligibility for a waiver of the ground of inadmissibility arising under section 212(g) of the Act pertaining to aliens who have been classified as having a Class A medical condition.

In proceedings for application for waiver of grounds of inadmissibility under sections and 212(g) and 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. The applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.