

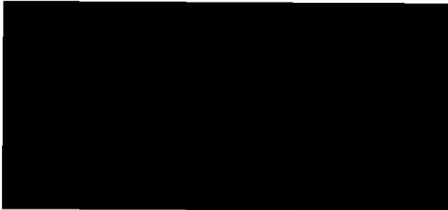
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



HL6

Date: **AUG 17 2011**

Office: ST. PAUL, MINNESOTA

FILE: 

IN RE: Applicant: 

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

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 black ink, appearing to read "Perry Rhew".

for

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking admission within ten years of her last departure from the United States. She seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident spouse and children.

In a decision dated April 6, 2009, the Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated April 6, 2009.

On appeal, the applicant's attorney asserts in a brief that the qualifying spouse would suffer emotional and financial hardship upon separation from the applicant. Further, the applicant's attorney contends that the qualifying spouse has struggled in the past living without the applicant and has jeopardized his job acting as a single parent. Moreover, the applicant's attorney states that the qualifying spouse could risk losing his lawful permanent resident status if he relocated to Mexico to live with the applicant. The applicant's attorney also indicates that the qualifying spouse would suffer additional hardships upon relocation to Mexico as a result of safety and financial concerns.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal (Form I-290B); briefs in support of the applicant's waiver; an affidavit and letter from the qualifying relative; a copy of the qualifying relative's permanent resident card; an approved Petition for Alien Relative (Form I-130); a marriage certificate; birth certificates for the applicant, the qualifying relative and their children; a death certificate for the qualifying relative's father; financial documentation; proof of health insurance; country condition materials; documents regarding the applicant and qualifying spouse's children's education; letters from the children; letters from friends; photographs; and documentation submitted in conjunction with the Application to Adjust Status (Form I-485).

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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. 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).

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.

The applicant’s qualifying relative in this case is her husband, who is a lawful permanent resident. The record indicates that the applicant entered the United States without inspection sometime in 1997 and remained until September 2005, when she voluntarily departed. The applicant accrued unlawful presence from 1997 until September 2005, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States. The applicant has not disputed her inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

As previously stated, the applicant’s attorney asserts that the qualifying spouse would suffer emotional and financial hardship upon separation from the applicant, his spouse of more than twenty years. Further, the applicant’s attorney contends that the qualifying spouse has struggled in the past living without the applicant and has jeopardized his job acting as a single parent. Moreover, the applicant’s attorney states that the qualifying spouse could risk losing his lawful permanent resident status if he relocated to Mexico to live with the applicant. The applicant’s attorney also indicates that the qualifying spouse would suffer additional hardships upon relocation to Mexico as a result of safety and financial concerns.

The applicant's attorney asserts that the qualifying spouse would suffer emotionally and financially if he is separated from the applicant. With regard to the emotional hardship, the applicant's attorney indicates that the applicant and qualifying relative have been married for over twenty years. In the qualifying spouse's affidavit, he indicates that he "wouldn't even know how to live life without [the applicant] around as she is the love of [his] life and the mother of [his] children." With regard to the potential financial hardships, the record contain financial documentation including the qualifying spouse's expenses, tax returns, letters from the qualifying spouse's employer, and Wage and Tax Statements (Form W-2) for the applicant and qualifying spouse. Further, the applicant's attorney asserts that if the applicant departed the United States her spouse would be unable to visit the applicant in Mexico due to their lack of resources, which would result in emotional and psychological hardship for the qualifying spouse. The documentation in the record supports the assertions made by the applicant's attorney regarding the qualifying spouse's potential financial restraints on visiting the applicant in Mexico. Further, the applicant's attorney contends that the qualifying spouse has struggled in the past living without the applicant and has jeopardized his job acting as a single parent. In the qualifying spouse's affidavit, he indicates that, when his wife was in Mexico, he was "unable to get the children to school on time, unable to get [himself] to work on time, unable to keep up the house or the regularity of meals..." and that he had to meet with his children's school and employer to address his issues with the applicant's absence. Further, he indicated that his employer told him that further tardiness could result in his termination. A family friend also confirmed that the qualifying spouse had problems raising his children by himself and holding his job. She indicated that the qualifying spouse was on the "verge of getting fired from his job" and that his children were also facing problems requiring the assistance of social workers. A letter from the applicant and qualifying spouse's children's school further indicates the issues facing the qualifying spouse when he was caring for his children without the assistance of his wife. When considered in the aggregate, the documentation provided regarding the qualifying spouse's financial, emotional and psychological hardships demonstrate that the qualifying spouse would suffer extreme hardship if he were to remain in the United States without the applicant.

The applicant also demonstrated that her qualifying relative would suffer extreme hardship in the event that he relocated to Mexico with the applicant. The qualifying spouse, who is 56 years old, has been living in the United States for over twenty years and his two children are United States citizens. The applicant's attorney also asserts that the qualifying spouse has no family that he can stay with in Mexico. The record contains an affidavit and letter from the qualifying spouse and letters from the children describing the poor conditions in which their grandparents live in Mexico, and receipts indicating that the applicant's spouse is sending remittances to his mother in Mexico. Likewise, the applicant's attorney indicates that the qualifying spouse would suffer from poor country conditions and due to the lack of available jobs in Mexico, and has provided documentation, including news articles on age discrimination in hiring practices, to substantiate his claims. The AAO therefore concludes that, were the applicant's spouse to relocate to Mexico with the applicant, he would suffer extreme hardship due to his length of residence and steady employment history in the United States, his family and property ties to the United States, and loss of his lawful permanent resident status and having to adjust to conditions in Mexico.

Considered in the aggregate, the applicant has established that her husband would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on her behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that she merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, the applicant's support from the qualifying spouse and friends and her apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's accrual of unlawful presence in the United States.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.