

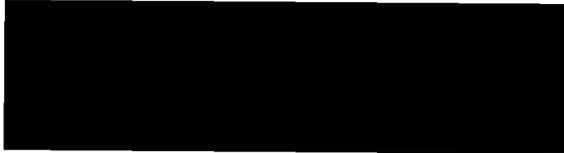
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
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U.S. Citizenship
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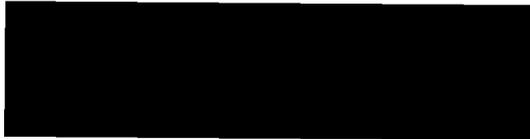
IN RE:

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 that reads "Perry Rhew".

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office 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 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 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. Citizen spouse.

The Field Office Director concluded the applicant failed to meet her burden of showing extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated June 23, 2009.

On appeal, former counsel for the applicant, submitted a brief in support of appeal. Therein, counsel describes the emotional and psychological hardship the applicant's spouse experiences given the current separation from the applicant. *Brief in support of appeal*, February 26, 2009. Thereafter, current counsel for the applicant, submitted additional evidence in support of the appeal, including psychosocial and psychiatric evaluations, declarations from the applicant, her spouse, as well as letters from family, employers, medical service providers, and friends, evidence of birth, marriage, permanent residence and naturalization, articles on country conditions in Mexico, photographs, federal income tax returns, financial documents, billing and account statements, evidence of money transfers, and evidence of medical appointments.

The record includes, but is not limited to, the documents listed above, other applications and petitions filed on behalf of the applicant as well as letters and declarations from the applicant's spouse, family, a doctor, and friends. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

At a consular interview, the applicant admitted she entered the United States without inspection in January 1996, and remained until she returned to Mexico in January 2008. The applicant accrued unlawful presence from the effective date of the unlawful presence provisions of the Act, April 1, 1997, until January 2008. As the applicant has accrued more than one year of unlawful presence, she is inadmissible to the United States under section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B). The applicant's qualifying relative in this case is her U.S. Citizen spouse.¹

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,

¹ The record contains an unsigned letter purportedly from the applicant's lawful permanent resident mother, [REDACTED]. However, as there is no assertion or evidence that the applicant's inadmissibility causes extreme hardship to [REDACTED] only hardship to the applicant's spouse will be considered. See letter from [REDACTED] unsigned, undated.

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 record contains a letter from the applicant's spouse describing the hardship he experiences currently given the separation from the applicant. Therein, the applicant's spouse explains: "I was raised in the city of MIER TAMAULIPAS with my maternal grandparents since my mother was a single parent. I loved them as if they were my parents because they took care of me throughout my childhood... Unfortunately I lost them this year (1-1-11) in a car accident where they both passed away. I was left with a big hole in my heart and life." *Letter from applicant's spouse*, received September 16, 2011. The record contains death certificates for [REDACTED] well as [REDACTED] who both passed away on January 1, 2011 due to "multiple blunt force injuries." *Certificates of Death, Texas Department of State Health Services*, January 28, 2011.

The applicant's spouse further contends he fears losing the applicant as well, because she lives in an area which is not safe, due to violence and clashes between "the Zetas and Gulf border," as well as organized crime. *Letter from applicant's spouse*, received September 16, 2011. Moreover, the applicant's spouse states that although they talk on the telephone every day, he continues to worry because the phone service is unreliable in her area, and something might happen to her any day. *Id.*

A psychosocial assessment from licensed clinical social worker [REDACTED] is submitted on appeal. Therein, [REDACTED] states that the impact of the stress was felt when he lost his job of more than 12 years. [REDACTED] states that due to the stress he complains of the following symptoms: anxiety, irritability, decrease in sleep, hygiene, overwhelming feeling of hopelessness and excessive worrying." *Psychosocial evaluation*, June 3, 2011. [REDACTED] concludes: [REDACTED] has suffered multiple losses in less than one year, his wife was deported, he lost his job of 12+ years, and his grandparents died. [REDACTED] not received any type of counseling and my professional opinion is that he suffers from complicated grief... [REDACTED] having been separated from his spouse further adds to the complicated grief process where his sole emotional support has also been 'lost'... Due to the emotional stress, [REDACTED] should seek the supervision of a medical doctor to treat his symptoms of depression. It is also recommended that [REDACTED] seek grief counseling so that he may appropriately cope with the multiple losses he has suffered." *Id.* A letter from [REDACTED] confirms the applicant's spouse has suffered from psychological issues since at least 2008. Therein, [REDACTED] reports: [REDACTED] is a patient well known to me. He has recently been diagnosed as having major depressive disorder. I have started him on medication for this and he will need routine follow up with me." *Letter from [REDACTED]* March 26, 2008.

The applicant's spouse also describes his financial difficulties. He states: "The economy is constantly changing, the gas price is going up day by day it gets more difficult for me to go visit her and the cost of daily living becomes harder. I have to pay rent here, bills, and pay her rent and other expenses therefore I have no money to save for a future and we are again in the same situation that made us leave our country... I lost my job [and] I have worked hard to find another one as soon as possible, I started to work for a company where I hope it could help me a lot, but I need my wife beside me to help me overcome this situation in the best way possible." *Letter from applicant's spouse*, received September 16, 2011. As supporting evidence, the record contains U.S. Federal income tax returns. The applicant's and her spouse's 2010 tax return shows an adjusted gross income of \$23,767, as well as no dependents. *See 2010 U.S. income tax return*. The record also contains rent receipts in Mexico showing a monthly rent of 1800 pesos, which is currently \$133 U.S. dollars. *See Mexico rent receipts*, 2010 and 2011. There is also evidence of a storage unit rental, at \$77.00 a month, bank statements, as well as a statement from the "Comision Federal de electricidad." This statement, as well as other documents of record, are unaccompanied by an English language translation and certification as required by 8 C.F.R. § 103.2(b)(3). As such, these documents cannot be considered by the AAO in adjudication of this appeal. The record also contains a CenterPoint Energy bill for \$115.15 for [REDACTED] a Reliant Energy bill for \$55.48 in the name of [REDACTED] a water bill for \$11.79, Cricket communications receipts for \$38.05, and an auto insurance premium notice for \$68.90 per month.

See financial documents. In addition to W-2 forms from Tyson's food, the record also contains paystubs for the applicant's spouse from [REDACTED] showing weekly gross income from \$312.75 to \$481.50. *See paystubs*, November and December 2010.

The applicant's mother declares the applicant's spouse "was living with [the applicant in Mexico] for a very short time since he was mistreated by gunmen and therefore his safety and fearing for his life moved back to Houston." *Letter from* [REDACTED] unsigned, undated. The applicant describes an incident in which her spouse was in danger in Mexico: "He was constantly threatened, he was on the verge of losing [his] life on two occasions because the organized crime followed him to make sure he didn't belong to a gang. He would leave home very early to work in [REDACTED] towards the target of the crime, when he would get off late he wouldn't come home because he had to drive through the crime." *Letter from applicant*, unsigned, undated. The applicant's spouse fears returning to Mexico because it "would be very dangerous since the mafia take people day by day." *Letter from applicant's spouse*, received September 16, 2011.

The financial documentation of record does not establish financial hardship given the current separation or given relocation to Mexico. The spouse's annual salary as shown by his 2010 Federal income tax returns, or by the paystubs from [REDACTED] shows an income which exceeds 125% of the minimum income requirement for a family of two. *See Form I-864P, 2011 Poverty Guidelines*, March 1, 2011. The applicant's spouse does not make the assertion he would be unable to find similar employment in Mexico, nor is there evidence of this in the record. The monthly bills, some of which are not in either the applicant or her spouse's name, do not support the conclusion that the spouse's expenses exceed his income. Moreover, the applicant further fails to provide any evidence regarding her own employment and earnings, and whether she would be able to contribute financially if she could join her spouse in the United States. Without these details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

Although there is insufficient evidence to show financial hardship, the applicant has shown her spouse faces significant emotional and psychological difficulties given their current separation. The record shows her spouse's depression, documented in 2008 and in 2011, is exacerbated by grief due to the loss of his grandparents, who he states raised him as their own child, the loss of his job of over 12 years, as well as the separation from the applicant. *See psychosocial evaluation*, June 3, 2011, *see also certificates of death, Texas Department of State Health Services*, January 28, 2011. Moreover, his concern and anxiety over the applicant's safety in Tamaulipas, Mexico is supported by objective facts contained in the current U.S. Department of State travel warning. Therein, the U.S. Department of State indicates:

You should defer non-essential travel to the state of Tamaulipas. In an effort to prevent the military or police from responding to criminal activity, TCOs have set up roadblocks or "blockades" in various parts of Nuevo Laredo in which armed gunmen carjack and rob unsuspecting drivers. These blockades occur without warning and at all times, day and night. The Consulate General prohibits employees from entering the entertainment zone in Nuevo Laredo known as

"Boys Town" because of concerns about violent crime in that area. U.S. government employees are currently restricted from travelling on the highway between Nuevo Laredo and Monterrey, as well as on Mexican Highway 2 towards Reynosa or Ciudad Acuña due to security concerns. Be aware of the risks posed by armed robbery and carjacking on state highways throughout Tamaulipas. In January 2011, a U.S. citizen was murdered in what appears to have been a failed carjacking attempt. While no highway routes through Tamaulipas are considered safe, many of the crimes reported to the U.S. Consulate General in Matamoros took place along the Matamoros-Tampico highway, particularly around San Fernando and the area north of Tampico.

Travel Warning, Mexico, U.S. Department of State, April 22, 2011. Given the evidence of the spouse's unique psychological and emotional hardship, due to the sudden loss of his grandparents, to whom he was exceptionally close, his loss of employment, as well as his objective fear over the applicant's safety, the AAO finds when these factors are considered in the aggregate, the applicant has established extreme hardship to her spouse given their current separation.

This travel warning also supports the spouse's assertion that he is afraid to return to Tamaulipas, Mexico, as well as the applicant's and her mother's description of incidents in Tamaulipas. *Letter from [REDACTED]* undated, *see also letter from applicant*, undated. Furthermore the applicant's spouse's fear for his safety in Tamaulipas is exacerbated by his psychological and emotional state, as discussed *supra*. The applicant's spouse mentions that medical care is insufficient in Mexico, but neglects to tie it to any medical conditions he currently has. *Id.* Nevertheless, the evidence of record shows the applicant's spouse has an objective fear for his own safety if he rejoined the applicant in Tamaulipas, Mexico, and that he already experiences exceptional emotional and psychological hardship. In that the record provides sufficient evidence to establish the impacts of relocation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the spouse joins the applicant in Mexico.

Considered in the aggregate, the applicant has established that her spouse 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-Morales*, 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 his 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.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In

Matter of Mendez-Morales, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Morales at 300.

In *Matter of Mendez-Morales*, 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 section 212(h)(1)(B) relief must bring forward to establish that he 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 include the extreme hardship to the applicant's spouse, some evidence of hardship to the applicant herself, a lack of a criminal record, evidence of good moral character as described in letters from family and friends, and family ties in the United States. The unfavorable factors include the applicant's initial entry without inspection and her unlawful presence in the United States.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. 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.