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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  
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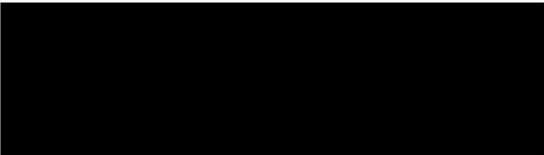
DATE: **DEC 23 2011** Office: SANTA ANA, CALIFORNIA

File: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 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 black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Santa Ana, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen and has two U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 25, 2009.

On appeal, the applicant states that her husband is suffering financially and emotionally due to her absence, and that he needs her to prepare meals which suit his medical condition. *Form I-290B*, received on August 27, 2009.

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

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

....

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

....

The record indicates that the applicant entered the United States with a Border Crossing Card in or around August 1997. Although the record is not clear as to the date that the applicant's authorized period of stay expired, the AAO notes that the maximum period of stay granted to a Border Crossing Card holder is six months. After entering the U.S. in or around August 1997, the applicant did not depart the United States until March 31, 2000. Therefore, the AAO finds that the applicant necessarily accrued more than one year of unlawful presence prior to her March 31, 2000, departure. The applicant returned to the U.S. using her Border Crossing Card on April 2, 2000, and departed again in September 2003, after again having accrued more than one year of unlawful presence. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; pictures of the applicant, her husband and their children; a statement from [REDACTED], Licensed Psychologist, dated August 14, 2009; a statement from the County of Los Angeles, Department of Children and Family Services, dated August 20, 2009; a statement from the Family Service of Pomona Valley, dated March 9, 2009; a statement from [REDACTED] dated August 7, 2009; copy of a health insurance card; and country conditions and background materials on Mexico.

The entire record was reviewed and all relevant evidence considered in rendering this decision. Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

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

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-Moralez*, 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.

Counsel asserts the applicant's spouse will experience physical, emotional and financial hardship due to the applicant's inadmissibility. *Brief in Support of Appeal*, received August 27, 2009. Counsel explains that the applicant was a victim of childhood abuse which has led to serious psychological issues for herself and her family. Counsel further explains that the applicant's son was also a victim of sexual abuse and has been receiving counseling to guide him through the psychological issues which will arise from the abuse.

The applicant's spouse has also submitted a statement and asserts he fears the violence in Mexico, particularly along the border region, and that it would put himself, the applicant and his family at risk. *Statement of the Applicant's Spouse*, dated August 22, 2009.

The record includes country conditions materials which details the ongoing narcotics related violence in Mexico. The AAO takes note of the Travel Warning issued by the United States Department of State on August 20, 2009, which discusses the violence in Mexico and specifically lists [REDACTED], where the applicant and her family would reside, as an area of concern.

The record includes several statements and reports concerning the mental health of the applicant. Seminal among them is the examination by [REDACTED], L.E.P., dated August 14, 2009, which corroborates that the abuse suffered by the applicant at the hands of her father when she was eight years old has resulted in a history of Major Depression, Panic Disorder and Agoraphobia (fear of the outside world). [REDACTED] states that she is currently prescribed Prozac. Evidence in the record indicates the nature of the abuse was severe.

The record also includes evidence corroborating that the applicant's 8 year old son was a victim of sexual abuse from a 14 year old cousin. A statement from the County of Los Angeles Department of Children and Family Services statement, dated August 20, 2009, notes that the abuse experienced by the applicant's son was significant and lasted over a period of time. The statement recommends further treatment for the child.

As noted above, hardship to an applicant is not directly relevant to a determination of extreme hardship to a qualifying relative. However, impacts which rise to a certain degree which would result in an indirect impact on a qualifying relative may be considered. Children are not qualifying relatives in this proceeding, however, hardship impacts to them may result in an indirect hardship impact to a qualifying relative, in this case the applicant's spouse. In this case the evidence is sufficient to establish that both the applicant and the applicant's son have been victims of serious sexual abuse which has resulted in psychological conditions and emotional trauma.

Counsel asserts that the applicant's spouse will experience extreme emotional hardship if the applicant had to return to Mexico to the area where the applicant's father lives, where she would not have access to covered medical care provided by his employment benefits and would not have access to the medical professionals who are familiar with her history and treatment and who have assisted her in the past during panic attacks. Counsel asserts the applicant's spouse would also experience substantial anxiety due to the fact that his son would have to reside in Mexico where counsel asserts there is a high incidence of sexual abuse of children. He further explains that his son would also lose access to his doctors and the coverage provided by the applicant's spouse's employment, and that he would worry about the applicant having panic attacks without her support network and while she would be solely responsible for caring for their children.

In light of the history of abuse to the applicant and her son, the AAO finds these assertions persuasive. The record includes copies of letters from the health care providers covered by the

applicant's spouse's employment. The severing of family and community ties, disrupting the continuity of care so crucial to the mental and emotional health of the applicant and their abused son, would result in an unusual and uncommon hardship on the applicant's spouse. When these considerations are taken in light of the fact that the applicant would be exposed to the perpetrator of her abuse, as well as the dangerous conditions in Mexico noted in the State Department Travel Warning, it is reasonable to conclude that the applicant's spouse would experience hardship rising to the level of extreme.

Many of the same considerations apply upon relocation. If the applicant's spouse were to relocate to Mexico he would no longer have access to the health insurance benefits provided by his employment and the applicant and his son would not have access to the network of health care providers who are familiar with their history and have documented their condition, impacting the applicant's spouse emotionally and psychologically. In addition, as noted above, the applicant's spouse would relocate to an area in Mexico which has been identified as an area of concern by the U.S. State Department. In addition to these impacts the applicant's spouse would have to cope with the common acculturation and financial impacts associated with relocating to Mexico. When these impacts are considered in the aggregate, the AAO finds them to establish that the applicant's spouse would experience extreme hardship upon relocation as well.

As the record establishes that a qualifying relative will experience extreme hardship both upon relocation and separation, the AAO may now consider whether the applicant warrants a waiver 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).

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).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then “balance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. “ *Id.* at 300 (Citations omitted).

The AAO finds that the unfavorable factors in this case include the applicant’s unlawful presence. The favorable factors in this case include the presence of the applicant’s spouse and children, the hardship the applicant’s spouse would experience and the lack of any criminal record during her residence in the United States. Although the applicant’s unlawful presence is a serious violation of immigration law, and cannot be condoned by the AAO, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The director’s decision will be withdrawn and 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 rests 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. The application is approved.