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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

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Date: **JUL 01 2011** Office: PHOENIX, AZ

FILE: 

IN RE: Applicant: 

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

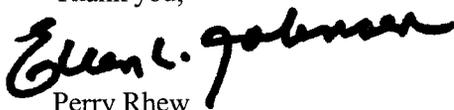
ON BEHALF OF APPLICANT:



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,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Phoenix, Arizona. The matter 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 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. The applicant is married to a U.S. citizen and 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), in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated March 11, 2009.

On appeal, counsel contends the field office director mistakenly focused on financial and separation hardships alone, without adequately considering all of the other relevant factors in the case, including the applicant's husband's severe health complications, his strong emotional ties to his family in the United States, and country conditions in Mexico.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on January 29, 2008; copies of the birth certificates of the applicant's two U.S. citizen children from her previous marriage; two letters from [REDACTED] copies of [REDACTED] medical records; a copy of the U.S. Department of State's Travel Alert for Mexico; copies of pay stubs, tax returns, and other financial documents; letters of support; a letter from the children's school; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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 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.

In this case, the record shows, and the applicant does not contest, that she entered the United States in April 2001 using a B2 visitor's visa and remained beyond her authorized stay, departing on August 6, 2006. The record further shows that the applicant reentered the United States on August 8, 2006, using a B2 visitor's visa and remained beyond her authorized stay, departing on July 1, 2008. The record shows that the applicant reentered the United States again on July 3, 2008, using a B2 visitor's visa and has since remained in the United States. The applicant accrued unlawful presence of over one year. She now seeks admission within ten years of her July 2008 departure. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for a period of more than one year.

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 this case, the applicant states that she has two sons from her previous marriage and that her ex-husband left them when the boys were one and three years old. She states that her sons now call her husband their father because he is the only man who has taken care of them and that he loves them very much. According to the applicant, if she returned to Mexico, she would have to live with her mother in a small town where people work on their own farms. The applicant states her husband does not speak Spanish and that it would be very difficult for him to find a job in Mexico. *Letter from* [REDACTED] dated February 23, 2009.

The applicant’s husband, [REDACTED] states that he is forty-five years old and that he is a veteran. He contends he was shot in the abdomen when he served in the U.S. Navy in 1987. According to [REDACTED]. [REDACTED] the bullet hit his pelvis and he suffers from sciatic nerve damage in his left leg as a result. He contends the pain he feels is like broken glass in his skin and contends that his left foot hurts as if there is a broken bone between his heel and little toe. He states that his left leg has lost a lot of strength and that it frequently cramps. He states he has lived with this pain for the past twenty years and often sees a doctor for muscle relaxers and pain medication. According to [REDACTED] for twenty years, he has put more weight on his right leg, which has now injured his right knee, limiting his daily activities and preventing him from driving. [REDACTED] contends he needs his wife’s help due to his injuries and that he relies on her to drive him to work and to doctor’s appointments. He states his left leg is so weak that it cannot hold his full weight. He states he cannot travel for any longer than one hour because he needs

to stand and straighten his right knee and that there is no VA hospital in Mexico. In addition, [REDACTED] contends that he and his wife want to have a child together, that he does not speak Spanish, and that he would have to sell their house if they moved to Mexico, which could take years in this economy. Furthermore, [REDACTED] contends that he is very close to his father, particularly after his mother passed away. [REDACTED] states his father is sixty-five years old and that his father takes care of his elderly, disabled parents. [REDACTED] contends he wants to be able to help his father care for his grandparents. *Letters from* [REDACTED] dated April 6, 2009, and February 23, 2009.

Copies of [REDACTED] medical records indicate he had an MRI of his right knee on March 25, 2009. According to the MRI, [REDACTED] has an “[a]rticular cartilage defect” that is six millimeters in diameter and a cyst that may represent an area of inflammatory change. *Phoenix Diagnostic Imaging*, dated March 25, 2009. A note from [REDACTED] physician states that he has “internal derangement of the [right] knee” and is unable to drive. *Certificate to Return to Work/School*, dated March 23, 2009. A copy of a prescription in the record indicates [REDACTED] was prescribed Naproxen, an anti-inflammatory drug. In addition, documentation from the U.S. Department of the Navy indicates that [REDACTED] suffered a gunshot to the stomach on August 16, 1987, and that he was removed from duty for twelve months to try to recover from his gunshot wound. Notes from his medical records on October 5, 1988, indicate he was still experiencing pain, weakness, and cramping, and that if he continued to be unable to perform limited duty in one year, he would have to be released from the Navy. Notes from [REDACTED] medical appointment on May 8, 1989, indicate he has nerve damage in his left leg due to the gunshot wound and that his leg throbs when he is trying to sleep. Notes from [REDACTED] medical appointment on April 5, 1990, indicate he had pain and weakness in his left thigh, calf, and foot due to his gunshot wound, and that he suffers from frequent or severe headaches, cramps in his legs, frequent or painful urination, foot trouble, and frequent trouble sleeping.

A letter from [REDACTED] father states that he had an industrial accident in 2004 that injured his back, suffered a stroke in 2005, and broke his heel in 2007. In addition, [REDACTED] father contends he is the primary caretaker of his eighty-seven year old mother as well as his eighty-eight year old father-in-law. He contends he relies on his son, [REDACTED], for assistance and support. *Letter from* [REDACTED] dated February 11, 2009.

A letter from [REDACTED] sister states that she broke her tailbone, suffers from fibromyalgia and pancreatitis, and is being treated for either multiple sclerosis or Parkinson’s disease and, therefore, is unable to help care for her ill grandmother. *Letter from* [REDACTED] dated February 23, 2009.

After a careful review of the evidence, the AAO finds that the applicant has established her husband will suffer extreme hardship as a result of the applicant’s waiver being denied. The record shows that the applicant’s husband, [REDACTED], suffered from a gunshot wound while serving in the U.S. Navy in 1987. According to [REDACTED], he continues to experience pain in his left leg as a result of the gunshot wound and has recently been experiencing pain in his right knee due to the overuse of his right leg. Documentation in the record substantiates [REDACTED] claims that he was shot in the abdomen, has experienced pain for years after his gunshot wound, and suffers from knee pain which causes him to be unable to drive. According to [REDACTED], he relies on his wife to help drive him to work and to doctor’s

appointments. In addition, the record shows that [REDACTED] is the stepfather of two U.S. citizen boys who are currently eight and ten years old. According to the applicant and [REDACTED] he is very attached to his stepsons. Considering these unique factors cumulatively, the AAO finds that remaining in the United States without his wife would result in extreme hardship to [REDACTED], taking this case beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if [REDACTED] relocated to Mexico to be with his wife, he would experience extreme hardship. Relocating to Mexico would disrupt the continuity of his health care and the procedures his doctor have in place to monitor and treat his health problems. In addition, the record shows that [REDACTED] was born in the United States, has served in the U.S. military, and does not speak Spanish. Furthermore, the record indicates that [REDACTED] assists his father in caring for his elderly grandparents. [REDACTED] would need to adjust to a life in Mexico after having lived in the United States his entire life, a difficult situation made even more complicated given his medical problems and close family ties in the United States. In sum, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's unlawful presence in the United States. The favorable and mitigating factors in the present case include: the applicant's family ties in the United States including her U.S. citizen husband and children; the extreme hardship to the applicant's husband and their children if she were refused admission; letters of support describing the applicant as intelligent and extremely well mannered, *see, e.g., Letter from [REDACTED]*, dated January 26, 2009; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violation is 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.

ORDER: The appeal is sustained.