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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**



**PUBLIC COPY**



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DATE: **JUL 07 2011** Office: CIUDAD JUAREZ 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, 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,

*Maria Felix*  
*for*  
Perry Rhew  
Chief, Administrative Appeals Office

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

The record reflects that the applicant, a native and citizen of Mexico, entered the United States without authorization in December 2003 and did not depart the United States until January 2006. The applicant was thus 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 more than one year. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen spouse and child, born in 2005.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 12, 2009.

In support of the appeal, counsel for the applicant submits the following *inter alia*: a brief, dated February 10, 2009; a copy of the applicant's spouse's naturalization certificate; a copy of the applicant and her spouse's marriage license; an affidavit from the applicant's spouse; evidence of the applicant's spouse's parents' lawful permanent resident status; articles about conditions in Mexico; support letters from friends, families and colleagues; an outpatient evaluation; a copy of the applicant's child's U.S. birth certificate; medical documentation pertaining to the applicant's child; financial documentation; and the applicant's spouse's college transcript. The entire record was reviewed and considered in rendering this decision.

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

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.

....

(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...

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, her in-laws or her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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.

The applicant’s U.S. citizen spouse asserts that he will suffer emotional, academic and financial hardship were he to reside in the United States while the applicant remained abroad due to her inadmissibility. In a declaration he states that he is suffering emotional hardship due to long-term separation from his spouse. He explains that his wife is his right hand partner, devoted to him, his child and his lawful permanent resident parents. [REDACTED] dated February 9, 2009. Counsel further explains that the applicant’s child is residing in Mexico with her mother due to the applicant’s spouse’s work obligations and such an arrangement is causing the applicant’s spouse hardship. Additionally, counsel references the problematic country conditions in Mexico and the concerns the applicant’s spouse has regarding his wife’s and child’s safety. Finally, counsel notes that the applicant’s spouse wants to obtain an associate’s degree but without his wife’s daily presence and support, he is unable to complete his studies. *Brief in Support of Appeal*, dated February 10, 2009.

In support, an evaluation has been provided from [REDACTED] explains that due to the applicant’s spouse’s work schedule, requiring him to work 60 to 70 hours a week, he is limited in his ability to travel to Ciudad Juarez, Mexico regularly to visit his wife. In addition, [REDACTED] notes that the applicant’s spouse is experiencing financial hardship as he has to maintain two households, one in the United States and one in Mexico. Further, [REDACTED] contends that the applicant’s spouse was recently a victim of vandalism and robbery

while in Mexico visiting his wife and he is thus fearful and worries about his wife's and child's well-being while abroad. ██████████ concludes that the applicant's spouse is experiencing acute depression with anxieties due to his wife's inadmissibility. *Outpatient Evaluation from ██████████* dated February 9, 2009.

In addition, letters have been provided from the applicant's spouse's supervisor and colleagues, confirming that the applicant's spouse is losing focus at work and is often late to work due to the delays he encounters in crossing from Mexico to the United States after visiting his wife and consequently, his job is in jeopardy. *Letter from ██████████* dated February 2, 2009, *Letter from ██████████* dated February 3, 2009, *Letter from ██████████* dated February 4, 2009 and *Letter from ██████████* dated November 23, 2007. Moreover, evidence of the financial contributions the applicant's spouse is making to his wife's household in Mexico has been submitted. In addition, letters have been provided from the applicant's spouse's family, friends and colleague, outlining the hardships the applicant's spouse is experiencing due to his wife's inadmissibility. Further, evidence that the applicant's spouse was previously enrolled in an Associate of Arts program has been provided. Finally, the record contains documentation establishing the problematic country conditions Mexico, including particularly dangerous conditions in Ciudad Juarez, where the applicant and her child currently reside, and Coahuila, where the applicant was born and where her parents reside. The U.S. Department of State has issued a travel warning advising U.S. citizens and lawful permanent residents of the high rates of crime and violence in Mexico, which states:

The situation in the state of Chihuahua, specifically Ciudad Juarez, is of special concern. Ciudad Juarez has the highest murder rate in Mexico. Mexican authorities report that more than 3,100 people were killed in Ciudad Juarez in 2010. Three persons associated with the Consulate General were murdered in March, 2010. You should defer non-essential travel to Ciudad Juarez and to the ██████████ area southeast of Ciudad Juarez.

....

The State of Coahuila has also experienced an increase in violent crimes and narcotics-related murders. U.S. government employees are restricted from traveling to the area known as "La Laguna", including the city of Torreon, and the city of Saltillo within the state. You should defer non-essential travel to this area, as well as to the cities of Piedras Negras and Ciudad Acuña due to frequent incidents of TCO-related violence. *Travel Warning-Mexico, U.S. Department of State, dated April 22, 2011.*

The record reflects that the cumulative effect of the emotional, academic and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship.

The applicant's U.S. citizen spouse asserts that he does not want to relocate to Mexico as the United States is his home. *Letter from* [REDACTED] dated September 27, 2007. Counsel documents that the applicant's spouse's extended family, including his mother, father, brother, sister, brother-in-law, reside in the United States. Moreover, counsel asserts that the applicant's spouse will be in fear in Mexico due to the problematic country conditions. Finally, counsel explains that were the applicant's spouse to relocate abroad, he would not be able to resume his studies. [REDACTED] at 3.

The record reflects that the applicant's spouse became a U.S. citizen over five years ago. Were he to relocate abroad to reside with the applicant, he would have to leave his community, his gainful employment, his academic studies, and his family, including his mother and father and siblings, and he would be concerned about his safety and well-being in Mexico. Moreover, the applicant's spouse would not be able to maintain his quality of living due to the substandard economy in Mexico.<sup>1</sup> Finally, as noted above, the U.S. Department of State has issued a travel warning, advising U.S. citizens and lawful permanent residents of the high rates of crime and violence in Mexico, including Ciudad Juarez and the applicant's home state of Coahuila. *Travel Warning-Mexico, U.S. Department of State*, dated April 22, 2011. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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

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<sup>1</sup> As noted by the U.S. Department of State,

Poverty is widespread (around 44% of the population lives below the poverty line) and high rates of economic growth are needed to create legitimate economic opportunities for new entrants to the work force. The Mexican economy in 2009 experienced its deepest recession since the 1930s. Gross domestic product (GDP) contracted by 6.5%, driven by weaker exports to the United States; lower remittances and investment from abroad; a decline in oil revenues; and the impact of H1N1 influenza on tourism.

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-Moralez*, 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 favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and child would face if the applicant were to remain in Mexico, regardless of whether they accompanied the applicant or stayed in the United States, the applicant's apparent lack of a criminal record, support letters from the applicant's family and friends, and the passage of more than seven years since the applicant's unlawful entry to the United States. The unfavorable factors in this matter are the applicant's unauthorized entry to the United States and unlawful presence while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.

**ORDER:** The appeal is sustained. The waiver application is approved.