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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 12 2011

Office: MEXICO CITY

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:

SELF-REPRESENTED

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, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The record establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in January 2001 and did not depart the United States until December 2008. The applicant accrued unlawful presence from December 2002, when he turned 18 years of age<sup>1</sup> until December 2008. The applicant was thus 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. The applicant does not contest this finding of inadmissibility. Rather, he is seeking a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

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 Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 5, 2010.

In support of the appeal, the applicant's spouse submits the following *inter alia*: a statement from the applicant's spouse; letters in support; financial documentation; evidence of money transfers to Mexico; and photographs of the applicant and his family. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) 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

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<sup>1</sup> Section 212(a)(9)(B) of the Acts states, in pertinent part:

(iii) Exceptions—

(I) Minors

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

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 or his children 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-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 U.S. citizen spouse contends that she will suffer emotional and financial hardship if the applicant is unable to reside in the United States. In a declaration she states that she is suffering emotional hardship due to her spouse’s inadmissibility because she wants the family to be united. She explains that when she travels to Mexico with her two younger boys to visit the applicant, she leaves her daughter from a previous relationship with her parents as she is enrolled in a ECEAP, Early Childhood Education and Assistance Program, and being separated from her is causing her hardship. In addition, the applicant’s spouse explains that prior to her husband’s departure, his income of over \$29,000 per year contributed to the support of their household, but he has not been able to find work in Mexico, and without his financial support she is experiencing financial hardship. She explains that she and her husband are in collections for numerous delinquent bills and she was forced to move in with her parents to save money. Finally, the applicant’s spouse states that she is fearful when she travels to Nuevo Leon, Mexico because of the high rate of crime and drug-related violence. *Letter from* [REDACTED]

In support, financial documentation has been provided, confirming that the applicant’s spouse is past due on numerous bills. In addition, the applicant’s 2008 Form W-2, Wage and Tax Statement, has been submitted to establish the applicant’s critical financial contributions to the household prior to

his departure from the United States and to support the assertion that the applicant's spouse is suffering financial hardship due to her husband's inadmissibility. Moreover, letters have been provided from the applicant's family members, establishing the hardships associated with his inadmissibility. Finally, the AAO notes that the U.S. Department of State has issued a travel warning for Mexico specifically referencing Nuevo Leon, where the applicant resides.<sup>2</sup>

The record reflects that the cumulative effect of the emotional and financial hardships the applicant's spouse is experiencing due to her husband's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant's spouse to remain in the United States without the applicant due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

The applicant's spouse contends that she would experience hardship if she relocated abroad to reside with the applicant due to his inadmissibility. The applicant's spouse explains that she is currently in Mexico with the applicant in order for her sons to be near their father and such an arrangement is causing her hardship. She notes that she and her husband have been unable to find work and thus, her parents and in-laws are sending money to assist them. She explains that she is struggling to buy the children clothing, diapers and food. The applicant's spouse further explains that the town where she is living is deserted and does not have access to mail, grocery stores, transportation or employment opportunities. Further, the applicant's spouse explains that she does not speak fluent Spanish and is unable to get Mexican documentation. Finally, she notes that she is afraid in Mexico due to the high rates of kidnapping and the presence of drug cartels. *Supra* at 2-3.

The record establishes that the applicant's U.S. citizen spouse was born in the United States and has no ties to Mexico. She would have to leave her family, most notably her parents and sibling, and her community, and she would be concerned about her safety as well as her financial well-being, in light of the lack of employment opportunities, in Mexico. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to her inadmissibility.

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<sup>2</sup> As noted by the U.S. Department of State:

You should be especially aware of safety and security concerns when visiting the northern border states of Northern Baja California, [REDACTED]. Much of the country's narcotics-related violence has occurred in the border region. More than a third of all U.S. citizens killed in Mexico in 2010 whose deaths were reported to the U.S. government were killed in the border cities of Ciudad Juarez and Tijuana. Narcotics-related homicide rates in the border [REDACTED] have increased dramatically in the past two years.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his 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 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 favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse and children would face if the applicant were to reside in Mexico, regardless of whether they accompanied the applicant or remained in the United States; the applicant's apparent lack of a criminal record; support letters from family members and from his employer; gainful employment prior to departing the United States; the payment of taxes; and the passage of more than ten years since the applicant's unlawful entry to the United States. The unfavorable factors in this matter are the applicant's unlawful entry into the United States and unlawful presence and employment 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 his 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 application approved.

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