

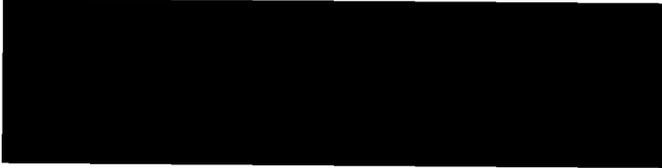
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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Date: JUL 21 2011

Office: CIUDAD JUAREZ

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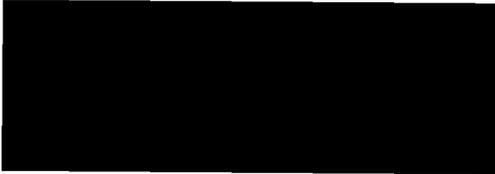


IN RE: Applicant:



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,

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Perry Rhew
Chief, Administrative Appeals Office

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

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 again seeking admission within ten years of his last departure from the United States. The applicant is the spouse of a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his wife.

In a decision dated December 8, 2008, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated December 8, 2008.

On appeal, the applicant's attorney submitted a brief in support of the applicant's waiver application. In his brief, the applicant's attorney asserts that the qualifying spouse is suffering emotional, psychological and financial issues due to her separation from the applicant. In the most recent declaration from the qualifying spouse, she states that she has not relocated to Mexico because she has safety concerns related to drug-related violence in Mexico and because of her close family ties to the United States.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), declarations from the qualifying spouse, a letter from the qualifying spouse's therapist, medical documentation regarding the qualifying spouse, a letter from the qualifying spouse's pastor, a letter from the qualifying spouse's employer, financial documentation, a letter for a potential employer for the applicant, photographs, an appeal brief, psychosocial evaluations of the qualifying spouse and of the applicant, a letter from a teacher regarding the qualifying spouse and applicant's child, a letter from the qualifying spouse's sister, letters from friends and family, information regarding the qualifying spouse and applicant's property, a letter from the qualifying spouse, the qualifying spouse's naturalization certificate, birth certificates for the applicant and qualifying spouse's children, letters from the children, and an approved Petition for Alien Relative (Form I-130).

Section 212(a)(9)(B) 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.

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. The applicant's wife 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 qualifying relative in this case is his wife, who is a United States citizen. The record indicates that the applicant entered the United States without inspection in August 1998 and remained until September 2007, when he voluntarily departed. The applicant accrued unlawful presence from August 1998 until September 2007, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. The applicant has not disputed his inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

The documentation submitted relating to the potential hardships facing the applicant’s spouse includes Form I-601, Form I-290B, declarations from the qualifying spouse, a letter from the qualifying spouse’s therapist, medical documentation regarding the qualifying spouse, a letter from the qualifying spouse’s pastor, a letter from the qualifying spouse’s employer, financial documentation, an appeal brief, a psychosocial evaluation of the qualifying spouse, a letter from the qualifying spouse’s sister, letters from friends and family, information regarding the qualifying spouse and applicant’s property, a letter from the qualifying spouse, and birth certificates for the applicant and qualifying spouse’s children.

As previously stated, the applicant's attorney asserts that the qualifying spouse is experiencing emotional, psychological and financial problems due to her separation from the applicant. In the most recent declaration from the qualifying spouse, she states that she has not relocated to Mexico because she has safety concerns related to drug-related violence in Mexico and because of her close family ties to the United States.

The applicant's attorney asserts that the qualifying spouse is suffering from psychological and emotional issues due to her separation from the applicant. The record contains a psychosocial evaluation of the qualifying spouse, a letter from the qualifying spouse's therapist, documentation of the medication prescribed to the qualifying spouse, declarations and a letter from the qualifying spouse and letters from family and friends, demonstrating the emotional and psychological issues that the qualifying spouse is encountering since the applicant returned to Mexico. The qualifying spouse has been suffering from severe depression, sleeplessness, anxiety, stress, suicidal ideation and obsessive compulsive issues. Moreover, the psychosocial evaluation revealed that the qualifying spouse has had a history of mental issues, including depression and an attempted suicide when she was a teenager. In her letter and declarations, the qualifying spouse also addresses the emotional issues that she is dealing with and her struggle as a single mom, having to raise her two children by herself without the emotional or financial support of her spouse. The psychosocial evaluation, the letter from the qualifying spouse's therapist, and letters from friends and family also support the assertions that the qualifying spouse is encountering emotional difficulties resulting from having to take care of her daughters on her own. With respect to the financial hardships, the applicant's attorney asserts that the qualifying spouse's "personal finances are in shambles." Further, the qualifying spouse asserts that she is currently working two jobs, a full time job at night so that she can spend time with her children and a part-time position during the day in child care. The record contains documentation regarding the income of the qualifying spouse, her expenses and the default and collection letters relating to her home (which went into foreclosure subsequent to the filing of this appeal), a letter from one of the qualifying spouse's employers, and letters from friends and family. The evidence of the qualifying spouse's expenses show that her expenses exceed her income and that she lost her home because she could no longer afford her mortgage payments. The record thereby demonstrates the necessity of the applicant's financial contributions to the family. When considered in the aggregate, the documentation provided regarding the qualifying spouse's emotional, psychological and financial hardships demonstrate that the qualifying spouse would suffer extreme hardship if she were to remain in the United States without the applicant.

The applicant also demonstrated that his qualifying relative would suffer extreme hardship in the event that she relocated to Mexico with the applicant. The qualifying spouse came to the United States from Mexico as a child and has been living in the United States for over twenty years. The qualifying spouse's entire family lives in the United States, including her two children, her parents and her three siblings. All her immediate family members are citizens of the United States or lawful permanent residents. The record contains letters from family and friends, declarations and a letter from the qualifying relative, and a psychosocial evaluation that all describe the qualifying spouse's close family ties to the United States. The qualifying spouse also expressed concern for the safety of herself and her two daughters because of drug-related violence in Mexico. Further, the qualifying

spouse asserts that her husband has been living in Mexico for a few years and that he has not been able to support himself and that, instead, she has worked two jobs to support herself, her children and the applicant. The record contains letters from friends and family, declarations and a letter from the qualifying spouse and financial documentation relating to the qualifying spouse's income to support these assertions. Further, the record reflects that it would be financially difficult for the applicant's spouse, considering her current income and expenses, to relocate to another country. As such, the record reflects that the cumulative effect of the qualifying spouse's family ties to the United States, her length of residence in the United States, her safety concerns, and her loss of employment, were she to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, his qualifying spouse would suffer extreme hardship if she returned to Mexico with him.

Considered in the aggregate, the applicant has established that his wife 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-Moralez*, 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.

In *Matter of* [REDACTED], 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 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 in this matter are the hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, the applicant's support from the qualifying spouse and her family and friends in the United States and his apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's accrual of unlawful presence in the United States.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted. 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 his burden and the appeal will be sustained.

ORDER: The appeal is sustained.