

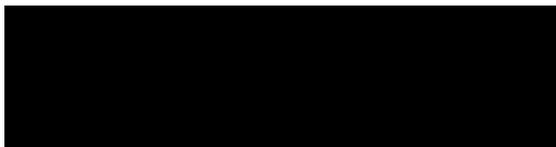
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: NOV 01 2011 Office: CIUDAD JUAREZ, MEXICO

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Ground 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico. The decision 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 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 seeking admission within ten years of her last departure from the United States. The applicant is married to a United States citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant 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 in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated January 27, 2009.

On appeal, counsel asserts that denial of the applicant's waiver application will result in extreme hardship to her spouse and children. *Form I-290B*, dated February 17, 2009; *see also counsel's brief*, dated February 17, 2009.

The record includes, but is not limited to, statements from the applicant's spouse and daughter; counsel's brief; a psychological evaluation of the applicant's spouse; statements concerning the applicant's involvement in her children's school; an educational certificate awarded to the applicant; letters from a teacher and a counselor at the school attended by the applicant's older daughter; a letter from the applicant's spouse's employer; earnings statements for the applicant's spouse; tax returns and W-2 Wage and Tax Statements; bank statements; mortgage payment and property tax statements; money transfer receipts; medical statements and records relating to the applicant's daughters; and country conditions information on Mexico. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

In the present case, the record reflects that the applicant entered the United States on September 29,

2000 without inspection and remained until she voluntarily departed on September 2, 2007. Accordingly, the applicant accumulated unlawful presence in the United States from September 29, 2000, until September 2, 2007, when she voluntarily departed to Mexico. As the applicant accrued unlawful presence of more than one year and is seeking admission within ten years of her 2007 departure, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act and must seek a section 212(a)(9)(B)(v) waiver of inadmissibility.

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 an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. In this case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel asserts that relocation to Mexico would result in hardship to the applicant’s spouse. Counsel states that the applicant’s spouse has significant ties to the United States in that he has resided in the United States since 1985, has had a stable, well-paying job for more than twenty years, has two United States citizen children, and is accustomed to the American way of life. Counsel contends that if the applicant’s spouse returns to Mexico, he would reside in Zacualpan, State of Nayarit, a town devastated by Mexico’s poor economy and drug-related violence. He states that the applicant’s spouse would have a very difficult time finding any type of employment given his age and the fact that he has no work experience in Mexico. Counsel also contends that given the level of violence, the applicant’s spouse would be concerned about his and his daughters’ safety since United States citizens are at greater risk of being kidnapped and held for ransom.

In a statement dated February 26, 2009, the applicant’s spouse asserts that the applicant has informed him that there is little work in Zacualpan and that it would be very difficult for someone with no work experience in Mexico to find a job. He states that even if he were to find work, it would not provide

him with sufficient income to support his family. The applicant's spouse also indicates that his younger daughter has been living with the applicant in Zacualpan, but that he believes it is too dangerous for her to continue doing so because of the violence, police corruption and kidnapping. This same daughter, the applicant's spouse states, also suffers from an allergic reaction to the dust and animals in Zacualpan, which creates bumps all over her body. He further indicates that he is concerned about the poor quality of medical services in Zacualpan and is afraid that if the applicant or his children get injured or become sick, they would not be able to obtain treatment because there is no hospital in Zacualpan. The applicant's spouse indicates that although he is currently healthy, he is also concerned for his own future medical needs.

In support of these assertions, the record contains a Travel Alert on Mexico prepared by the U.S. Department of State, Bureau of Consular Affairs, dated February 20, 2009; MSNBC.Com articles entitled: "Mexico's drug war looms large for U.S.," dated February 24, 2009, and "1 dead in attack on Mexico governor's convoy," dated February 23, 2009; and a BBC News Q&A on "Mexico's drug-fuelled violence." The record also contains a letter from [REDACTED] in Zacualpan, Nayarit, dated January 30, 2009, stating that the applicant's younger daughter was treated for Faringoamigdalitis. It further includes a letter from [REDACTED] [REDACTED] that indicates they have employed the applicant's spouse since May 10, 1988.

The AAO acknowledges the country conditions information provided for the record and notes that due to the high level of drug-related violence in Mexico, the U.S. Department of State has issued a travel warning advising U.S. citizens against travel to certain areas of Mexico. The State of Nayarit is one of those areas that continues to be identified by the Department of State as prone to drug-related violence. In that, the record indicates that the applicant's spouse will reside in Zacualpan if he relocates to Mexico, the AAO finds the threat of drug violence to be a factor that should be considered in determining whether he will experience extreme hardship upon relocation.

Having reviewed the record, the AAO finds the applicant's spouse's long-term residence in the United States, the loss of a job at which he has worked for more than 23 years, the risk to his safety presented by the level of drug-related violence in the State of Nayarit, his concerns regarding the safety of his children in Nayarit, and the normal disruptions and difficulties created by relocation, when reviewed in the aggregate, to establish that the applicant's spouse would experience extreme hardship if he relocated to Mexico to be with her.

Counsel asserts that the applicant's spouse has experienced and continues to experience emotional and financial hardship as a result of his separation from the applicant and his younger child, [REDACTED]. Counsel contends that the prolonged separation from the applicant has caused and continues to cause extreme emotional hardship to her spouse, as detailed in the report prepared by [REDACTED] Licensed Marriage and Family Psychotherapist. Counsel further contends that the applicant's spouse has depleted his savings as a result of the extra expenses resulting from the applicant's return to Mexico. Counsel asserts that if the applicant remains in Mexico, her spouse will have difficulty supporting two households.

In his statement dated February 26, 2009, the applicant's spouse asserts that he is experiencing hardship since being separated from the applicant and his younger daughter, [REDACTED]. He states that if the

applicant is not allowed to return to the United States, it will cause him great emotional pain and extreme hardship. The applicant's spouse also indicates that he will have difficulties maintaining two households and that he has depleted his savings providing for the applicant and his younger daughter in Mexico.

In his psychological evaluation of the applicant's spouse, [REDACTED] reports that a clinical assessment and mental status evaluation of the applicant's spouse revealed the following symptoms: sadness, insomnia, poor concentration, lack of energy and joy in life, crying episodes, depressed mood, social withdrawal and negative thinking. [REDACTED] notes that the applicant's spouse's anxiety is manifested by excessive worry, "feeling on edge," mental and muscular tension and restlessness, and concludes that the applicant's spouse's behavior fits the criteria of a Major Depressive Disorder (DSM-IV-Diagnosis 296.2 Major Depressive Disorder). [REDACTED] states that the applicant's spouse also reported to him that he has attention problems; that he is sad and restless, which is affecting his job performance; that he wakes up in the middle of the night sweating and trembling; and that his mind is constantly focusing on his wife and child. [REDACTED] notes that with prolonged separation, the applicant's spouse's symptoms of depression and anxiety will increase, impairing his social, occupational and psychological functioning and stability.

[REDACTED] also reports that the applicant's spouse is also experiencing economic hardships. He states that the applicant's spouse is working only thirty hours a week as a result of the economic turndown in California, is supporting his wife and child in Mexico, and is paying for other financial obligations in the United States, including \$360 per month in childcare for his older daughter. [REDACTED] reports that the applicant's spouse is in a desperate, precarious and limited economic situation. [REDACTED] indicates that the applicant's two daughters want to be together with their mother in California, but that the long separation is affecting them and that they are feeling very depressed, anxious and frustrated. [REDACTED] notes that the children are in a very important stage of development where a positive attachment will have significant and lasting effects in their personality but that the hardship they bare due to separation may greatly affect their psychological development, sense of identity, self-esteem and security.

A letter from [REDACTED] at [REDACTED] states that she has enrolled the applicant's older daughter in school counseling to help her deal with her grief over her separation from her mother. A letter from [REDACTED] second grade teacher and Gifted and Talented Education Coordinator at [REDACTED] states that the applicant's older daughter demonstrates a high level of thinking skills, but that her continued educational development will be impacted by her grief over her mother's absence and that she often writes and speaks about her feelings in the classroom.

While the record does not document that the applicant's income has decreased as a result of a reduction in his working hours or what expenses he faces on a monthly basis, it does contain copies of money order transfer receipts which indicate that during the period 2008 through 2009, the applicant's spouse sent a significant percentage of his income to the applicant in Mexico. Therefore, the record indicates that the applicant's spouse is experiencing some level of financial hardship as a result of the applicant's absence.

When the AAO considers the applicant's spouse's mental health status, the financial impact of his separation from the applicant, the additional burden that caring for a child with emotional problems places on a single parent, and the hardships routinely created by the separation of families in the aggregate, we find the record to demonstrate that the applicant's spouse would experience extreme hardship if he remains in the United States without the applicant.

As the applicant has established extreme hardship to her spouse as a result of her inadmissibility, she is statutorily eligible for a waiver under section 212(a)(B)(v) of the Act. Accordingly, the AAO now turns to a consideration of the applicant's eligibility for a favorable exercise of discretion.

In discretionary matters, the applicant 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, "[B]alance 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 adverse factors in the present case are the applicant's unlawful presence in the United States for which she now seeks a waiver, and her initial entry into the United States without inspection. The mitigating factors in the present case are the applicant's U.S. citizen spouse and two U.S. citizen children; the extreme hardship to her spouse if the waiver application is denied; the absence of a criminal record; her commitment to better herself as evidenced by her participation in adult education classes; and her involvement in and commitment to her children's school and to her community at large, as stated in the letters of support provided by the teachers at her older daughter's school and the Head Start Coordinator at the [REDACTED]

The AAO finds the applicant's immigration violations to be serious in nature and does not condone them. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal will be sustained.