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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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NOV 01 2011

DATE: Office: MEXICO CITY, MEXICO File: [REDACTED]

IN RE: Applicant: [REDACTED]

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

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico. She was 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 one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen and has one U.S. citizen daughter. She 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 16, 2009.

On appeal, the applicant spouse states that he injured his back, has had to have surgery, has been out of work and has been residing with his sister since the applicant's departure, and that the separation from the applicant during this period has resulted in extreme hardship to him. He further states that his young daughter has been sick while residing in Mexico with the applicant and asks that United States Citizenship and Immigration Services (USCIS) grant the applicant's waiver. *Attachment, Form I-290B*, received on July 17, 2009.

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

(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.

....

The record indicates that the applicant entered the United States without inspection in January 2001 and remained until she departed voluntarily in January 2008. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, statements from the applicant's spouse; statements from friends and family members of the applicant; a hand-written note from [REDACTED] dated August 13, 2009, regarding the applicant's spouse; medical records in Spanish pertaining to the

applicant's daughter; a statement from [REDACTED] of [REDACTED] [REDACTED], dated February 19, 2008; tax returns and wage documentation for the applicant's spouse; and photographs of the applicant, her husband and their daughter.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 the applicant or her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 spouse asserts on appeal that he suffered a back injury in 2008 and has been unable to work since that time. *Attachment, Form I-290B*, received on July 17, 2009. He explains that he has had to reside with his sister but that she is unable to adequately care for him because she must attend her own family and that he needs the applicant present to assist him during his rehabilitation. The record contains a statement from [REDACTED] of [REDACTED], dated August 13, 2009, corroborating the applicant’s spouse’s assertion that he is suffering from back pain, has recently had surgery and has been referred for further medical treatment for the condition.

With regard to extreme hardship upon relocation, the applicant’s spouse has asserted that he would experience extreme hardship upon relocation to Mexico. *Statement of the Applicant’s Spouse*, dated March 30, 2008. He explains that he has resided in the United States his entire life, is unfamiliar with the language and customs in Mexico, would not be able to find commensurate employment, and

would experience hardship due to separation from his family members in the United States. The applicant's spouse has also asserted that he would be unable to take his daughter from a previous relationship to Mexico upon relocation because his former spouse would not allow it, and that he would be forced to separate from his oldest daughter who is attending college.

The record contains a statement from the applicant's spouse's parents explaining their various medical issues. *Joint Statement of [REDACTED] undated.* The applicant's spouse's mother explains that she has congestive heart failure and would be unable to travel to Mexico. The applicant's spouse's father explains in the letter that he has had heart surgery and gall-bladder problems. There are no medical records to corroborate the statement of the applicant's spouse's parents, but the AAO will nonetheless accept that it would be impractical for them to relocate to Mexico with the applicant and her spouse, and that if the applicant's spouse had to relocate to Mexico he would be impacted by separation from his elderly parents. There is also insufficient evidence to establish that the applicant's spouse would be unable to take his nine year old daughter to Mexico upon relocation, but the AAO will nonetheless consider the presence of his nine year old daughter as a significant family tie to the United States.

The applicant's spouse has asserted that the conditions in Mexico cause him anxiety and fear and he cites to a recent travel warning issued by the U.S. Department of State for Mexico regarding the narcotics related violence there. Although the record does not contain the country conditions materials referenced by the applicant's spouse, the AAO can take notice of the April 21, 2011, Travel Warning issued by the U.S. Department of State warning that U.S. citizens should exercise caution when visiting the country and detailing the general decline in the conditions there.

The AAO also recognizes, as noted above, that the applicant's spouse has submitted documentation indicating that he has recently had back surgery due to an injury that he suffered in 2008. Relocating to Mexico would result in a separation from the doctors and health care providers which are familiar with his condition and who have treated him since that time, and would compound the acculturation impacts on him from relocating to Mexico.

The applicant's spouse has also noted that his daughter, who is residing with the applicant in Mexico, has been sick numerous times. The record includes several medical documents which presumably pertain to his daughter's illnesses, but which are also in Spanish. The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. As these documents are in Spanish the AAO cannot consider them for the purpose of these proceedings. The AAO also notes, as discussed above, that children are not qualifying relatives in these proceedings and hardship to them may only be considered as it impacts the qualifying relative. In this case the record does not contain sufficient documentation to establish that the applicant's spouse is experiencing any indirect hardship factor due to medical conditions of his daughter.

The record does not contain any documentation to support the applicant's spouse's assertion that he would be unable to find employment in Mexico. Nor does the applicant's spouse's assertion that he would be unable to obtain a salary commensurate with what he earned in the United States represent an uncommon hardship. Nonetheless, in light of the fact that the applicant's spouse has been recently injured and unable to maintain employment in the United States, it can be determined from the evidence in the record that the applicant's spouse would experience significant financial impact upon relocation to Mexico.

When these hardship factors are examined in the aggregate, including the physical hardship related to the applicant's spouse's back injury, his family and community ties to the United States and the acculturation impacts, they establish that the applicant's spouse would experience uncommon hardship rising to the level of extreme upon relocation to Mexico.

With regard to hardship upon separation, the applicant's spouse has asserted that he is experiencing Major Chronic Depression due to separation from the applicant. He also states that he is suffering physical hardship due related to his back injury because the applicant is not there to assist him and help him during rehabilitation. He explains that he is struggling to provide financial support for his spouse and daughter residing in Mexico, that he is anxious about their residence in Mexico due to the conditions there and that he would be unable to visit her with any frequency due to his employment situation.

As noted above there is sufficient evidence to establish that the applicant's spouse has a medical condition related to an injury he sustained to his back. The record also shows that the medical condition has impacted the applicant's spouse's ability to work and it has impacted his ability to provide financial support for his spouse in Mexico. The AAO, as discussed above, takes note of the recent Travel Warning for U.S. citizens in Mexico, and the safety concerns this present to the applicant's spouse while the applicant and her daughter reside in Mexico, although they currently reside in Mexico City, which is not a noted area of narcotics related violence.

The record contains a statement from [REDACTED], of [REDACTED], dated February 19, 2008, stating that the applicant's spouse is in therapy with his clinic due to a diagnosis of Chronic Major Depression. Although the statement is brief and fails to provide any context upon which this diagnosis was made, the AAO will nonetheless give [REDACTED] statement due consideration when aggregating the hardship impacts due to separation on the applicant's spouse.

When the hardship impacts asserted upon separation, including medical, financial and emotional issues, are examined in the aggregate they indicate that the applicant's spouse will experience uncommon hardship rising to the level of extreme hardship, and as such, the record establishes that a qualifying relative will experience extreme hardship due to the applicant's inadmissibility, both upon relocation and separation.

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 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 "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 AAO finds that the unfavorable factors in this case include the applicant's entry without inspection and unlawful presence. The favorable factors in this case include the presence of the applicant's spouse, the hardship the applicant's spouse would experience due to her inadmissibility and the lack of any criminal record during her residence in the United States. The favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The director's decision will be withdrawn and the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

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