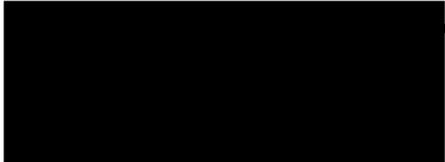


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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

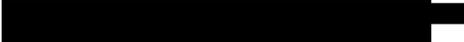


H6

DATE: NOV 07 2011

Office: MEXICO CITY (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:

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,


f/

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 September 1997 and remained until January 2008, when he voluntarily departed. He 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 and their U.S.-born daughter.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, dated June 17, 2009.

In support of the appeal, the applicant's spouse submits a psychological evaluation from a family therapist; a doctor's prescriptions for several anti-depressive medications; bank statements and documents regarding financial obligations, including credit card and loan statements and utility bills; a child's birth certificate; and letters in support of both the applicant and his spouse. The record also contains a number of the same or similar documents submitted in support of the waiver application. 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 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) 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 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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-I-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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case 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. She claims to be "emotionally destroyed as a result of this separation" and, after observing the situation causing her child to lose her appetite and have trouble sleeping, says "watching my daughter going through so much pain goes beyond what I can bear." *Appeal Brief*, at 5. A psychological evaluation based on clinical interviews with applicant's wife and daughter is submitted in support of these claims. Noting the applicant's wife's "psychological fragility" stemming from abandonment by a previous partner, the evaluation concludes:

Mother and daughter are mutually fueling their respective depressive disorders. [...]these feeling [sic] cannot be only categorized as the sadness that typically comes as a result of a sudden separation. It goes beyond that facet and falls into a clinically identifiable problem.

Psychological Evaluation by Angel Beato, MSW, ASW, dated July 9, 2009.

Numerous letters of support establish that applicant's wife has an extensive, nonfamily network, to complement the support of her two lawful permanent resident parents, four U.S. citizen siblings, and extended family of aunts, uncles, and cousins in the United States. *Appeal Brief*, at 4. Statements from friends and coworkers note the change in applicant's demeanor from generally happy and collegial to depressed and sad, and colleagues report that her performance as a medical assistant has suffered. Her day care provider observes that their daughter is sad, not eating well, and isolating herself from the other children, and the situation is adding to applicant's wife's emotional burden. Buttressing these claims of severe emotional and mental distress, the record reflects that the applicant's wife has been prescribed several anti-depressant medications.

The applicant's wife further states the separation is imposing financial hardship, as the applicant was the couple's principal provider, earning 80% of family income. The applicant's wife provides details of her own earning history to support the assertion that absence of applicant's income has

pushed the family into poverty, though the AAO notes that detailed evidence of the applicant's income while in the United States was not provided. The record reflects, however, that the cumulative effect of the emotional, mental, and financial hardships the applicant's spouse is experiencing due to her husband's inadmissibly 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, she would suffer extreme hardship.

The qualifying relative contends that she would experience hardship if she relocated abroad to reside with the applicant. She says that moving to Mexico and leaving her entire extended family behind would go beyond cultural readjustment; it would involve settling in a country where she has no ties and poor job prospects. As noted previously, her parents, siblings, and other relatives all live in the United States. The record reflects that she has significantly greater family ties to the United States than the native Mexico she left as a child. Based on a totality of the circumstances, including her length of residence and strong family ties in the United States, the AAO concludes that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant.

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.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that 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 evaluating whether relief is warranted in the exercise of discretion, the BIA stated:

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 favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse and daughter 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; supporting declarations from family members, friends, and co-workers; the applicant's stable U.S. employment from 2001 to his departure; and the passage of over 14 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 while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds 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 met that burden. Accordingly, this appeal will be sustained and the application approved.

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