

identifying data deleted to  
prevent identity unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



H6

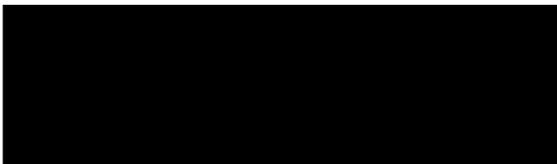
DATE: NOV 08 2010 OFFICE: CIUDAD JUAREZ

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:



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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 readmission within 10 years of his last departure from the United States. The applicant seeks 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 record failed to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States and denied the application accordingly. *See Decision of Field Office Director* dated March 31, 2009.

On appeal, counsel for the applicant asserts the applicant's spouse would suffer extreme hardship given the current separation from the applicant and if she relocates to Mexico to live with the applicant. Counsel asserts the "travel costs for respondent's qualifying relative to travel and see her husband are staggering, considering her current manual labor job as a home / business cleaner." *Brief in support of appeal*, July 1, 2009. Counsel explains the applicant's spouse also has medical and psychological conditions, such as "cervical strain and radiculopathy" as well as "depression, anxiety, and related stressors" which contribute to the spouse's hardship. *Id.* Medical care for the spouse's conditions in Mexico, counsel contends, is "problematic at best" and is beyond what the household can afford. *Id.* Counsel also asserts both the applicant and his spouse "appear to have good moral character." *Id.*

The record includes, but is not limited to, a brief in support of appeal, birth, marriage, and naturalization certificates, statements from the applicant's spouse, letters from the spouse's employers and church, a letter from an employer in the United States, evidence on the distance between the applicant and his spouse as well as travel costs, copies of household bills as well as collections letters, a lease agreement, evidence of automobile payments and repair bills, paperwork related to the spouse's father's death, letters from the spouse's U.S. citizen daughter, articles on country conditions in Mexico, medical records and copies of prescriptions, a letter from the spouse's physician, articles on psychological conditions and medications, a psychological evaluation, educational paperwork for the spouse and a daughter, evidence on the applicant's convictions for driving under the influence (DUI), and letters attesting to the applicant's good moral character and compliance with state court orders. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects the applicant entered the United States without inspection in August 1989. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until December 2006, when the applicant returned to Mexico. The applicant thus accrued unlawful presence of over one year, and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative in this case is his U.S. Citizen spouse.

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

---

<sup>1</sup> The AAO notes that the applicant also has convictions for Driving Under the Influence. These convictions are not crimes involving moral turpitude and therefore do not constitute an additional ground of inadmissibility.

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.

Counsel contends the applicant's spouse suffers financial hardship related to travel costs. *Brief in support of appeal*, July 1, 2009. In support the record contains evidence that a one-way trip from

██████████ where the spouse resides, to ██████████, Mexico, where the applicant resides, is ██████████ miles, and that a one-way bus ticket costs \$73.00. *See Yellow Pages printout, May 29, 2009, see also Turimex Internacional ticket, June 25, 2008.* In her statement, the applicant's spouse discusses financial hardship more generally: "I need my husband's assistance to maintain financial stability because I alone am bearing the burden of paying bills, rent, insurance, car payments, vehicle repairs, medical bills, and debts." *Statement of applicant's spouse, May 18, 2009.* To corroborate, the applicant submits numerous copies of household bills, a lease agreement reflecting a monthly payment of \$375.00, and various letters from collections agencies. *See evidence of expenses.* The applicant submits letters from his spouse's two employers as evidence of his spouse's income as a "domestic employee and a business custodian." *Statement of applicant's spouse, May 18, 2009.* One letter affirms the spouse "is currently employed for my janitorial cleaning services. ██████████ was hired on April 1, 2006; she earns a monthly salary of \$325.00. She does not receive benefits, insurance, and paid time off... Also, due to an injury, she is on light duties." *Letter from ██████████ May 18, 2008.* The other letter explains the spouse has been employed as "a domestic worker for the past eight years. She does not receive benefits, insurance, or paid time off. Her weekly payroll salary Gross is \$90, Net is \$83.11. She only receives pay for days worked. She rarely misses work because she cannot afford to go unpaid. I have noticed her back pain has increased lately as it affects her ability to lift items to clean." *Letter from ██████████ May 13, 2009.*

Counsel asserts the applicant's spouse suffers from hardship due to her medical conditions, "cervical strain and radiculopathy." *Brief in support of appeal, July 1, 2009.* The applicant's spouse explains: "Seven years ago I was involved in a car accident that damaged two discs in my neck and lower back... On April 7<sup>th</sup> of 2009 I was admitted into the emergency room at ██████████ due to a fall that re-injured my neck and back. There I was given X-rays and diagnosed with cervical strain and radiculopathy... On May 4<sup>th</sup> of 2009, I returned to the emergency room due to my strenuous pain and I was put on another medication, [Hydrocodone], for my back problems. Again, I was referred to a specialist, ██████████ but this time he specialized in neck and back pain but I was unable to receive treatment from his facility because I did not have any health insurance." *Statement of applicant's spouse, May 18, 2009.* The applicant submits medical bills as evidence of medical expenses and lack of health insurance, as well as an updated letter from ██████████. Therein, ██████████ reports: "██████████ has been evaluated at our clinic for injuries sustained in a past motor vehicle accident. A comprehensive exam was performed on ██████████ on October 7, 2009. The patient presented with low back pain, neck pain, and varying degrees of shoulder pain with certain movements. The patient's range of motion was examined and it is noted that [she] had a decrease in all cervical and lumbar movements with accompanying pain... no evidence of fracture or osseous abnormality... The patient has been found in the second phase of spinal degeneration and has been given a treatment plan to relieve discomfort." *Letter from ██████████ October 20, 2009.* It is noted that on the attached bill, the insurance coverage was listed as "none." *Bill from ██████████ October 20, 2009.* The applicant also submits discharge instructions from ██████████ as evidence of an emergency room visit and a referral to ██████████ *See discharge instructions, May 4, 2009.* Prescriptions for hydrocodone are also attached. *See Walmart Pharmacy instructions, May 6, 2009.*

A psychological evaluation was also submitted in support of counsel's assertions on the spouse's "depression, anxiety, and related stressors." *Brief in support of appeal*, July 1, 2009. Therein, [REDACTED] relates a family history of the applicant's spouse: [REDACTED] and [REDACTED] met twelve years ago and have lived as family since that time... [REDACTED]'s natural father died in May 2008. She described her father as 'my only protection' until she met [REDACTED].. As a child, [REDACTED] experienced abandonment by her natural mother and sexual abuse by her stepfather, before going to live with her natural father. [REDACTED] is the youngest of five children... [REDACTED]'s first husband had been abusive and demeaning towards her. [REDACTED], her second husband, has treated her with kindness and respect." *Psychological evaluation*, May 26, 2009. The applicant's spouse explains her natural father's death was difficult for her: "My father was a very ill man and just three days after mother's day on May 14<sup>th</sup> 2008, I had to witness my father's passing. I must say that the feeling was unbearable to have to go through alone... Not having my husband there with me caused more grief upon my already weak psyche." *Statement of applicant's spouse*, May 18, 2009. The evaluation also describes the spouse's psychological symptoms and past treatments: "Since [REDACTED] deportation and then her father's death, [REDACTED] has diminished in functioning and has experienced severe depression. She has been treated by her physician for depressive symptoms and anxiety-related stressors. Symptoms include weight loss, suicidal ideation with no intent to follow through, panic attacks (sweaty palms, difficulty breathing, and pacing), difficulty sleeping, waking often, diarrhea, and overall depressed mood... Recent medications have been changed to Cymbalta (60 mg) and Zyprexa (2.5 mg) to reduce depression and anxiety." *Psychological evaluation*, May 26, 2009. [REDACTED] confirms the spouse is suffering from a "great deal of depression." *Letter from [REDACTED]*, May 18, 2009. Copies of prescriptions for Alprazolam, Zyprexa, and Cymbalta are also submitted. *Prescriptions from Houston Street Pharmacy*, April 9, 2009.

Counsel also claims "the medical care available in Mexico for respondent's qualifying relative is problematic at best... The government's hospitals are overcrowded, the private hospitals are beyond any costs the respondent and respondent's qualifying relative could afford, the emergency rooms simply will not serve anyone without immediate payment, and hospitals that do accept credit cards are difficult to find." *Brief in support of appeal*, July 1, 2009. The applicant's spouse confirms "relocation to Mexico would cause severe hardship for the reasons that Mexico lacks in both employment opportunity and health care in which I need for my conditions and economic issues." *Statement of the applicant's spouse*, May 18, 2009. The spouse also expresses concern over safety issues in Mexico as well as influenza outbreaks. *Id.* In support, the record contains articles on criminal activity in Mexico as well as a U.S. Department of State travel report on Mexico. *Mexico: Country Specific Information, U.S. Department of State*, August 13, 2009, *Crime against tourists in Mexico, Murray on Travel*, 2008.

The applicant has submitted substantial evidence of his spouse's financial hardship. The spouse's income from two jobs, as shown by letters from her employers, amounts to approximately \$8580.00 per year. *See letter from [REDACTED]*, May 18, 2008, *see also letter from [REDACTED]*, May 13, 2009. This income is below the minimum income requirement for a family of 2, as set forth by the Department of Homeland Security poverty guidelines. *See I-864P, Poverty*

*guidelines, Department of Homeland Security, March 1, 2011. Additionally, the applicant has submitted numerous bills, a lease agreement, and collection notices which demonstrate his spouse's income is insufficient to meet those financial obligations. It is noted that one of the spouse's daughters was enrolled in training to become a U.S. Marine in 2009, and according to the spouse, the other daughter has children of her own. Letter from [REDACTED] undated, see also statement of the applicant's spouse, May 18, 2009. Although the record lacks evidence on whether the children can contribute financially, and whether the applicant is able to contribute financially while in Mexico and what his expenses are in Mexico, the applicant submits an employment letter showing there is a job available for him in the United States. Letter from [REDACTED] January 22, 2008. If the applicant were admissible, and could join his spouse in the United States, the applicant could presumably take this job and alleviate his spouse's financial difficulties. As such, given the evidence of record, as a whole, the applicant has shown his spouse experiences financial difficulties due to her present separation from the applicant.*

The record also shows the spouse's financial difficulties are exacerbated by her medical problems. There is ample evidence, given the discharge instructions, letters from physicians, and the prescription copies, to show the applicant experienced injury resulting from a car accident several years ago, and has undergone treatment throughout the years, even given her lack of medical insurance. The letters from the spouse's employers both confirm the spouse performs lighter work, or has had difficulty performing her work duties because of her medical difficulties. See letter from [REDACTED] May 18, 2008 ("due to an injury, she is on light duties"), see also letter from [REDACTED] May 13, 2009 ("I have noticed her back pain has increase lately as it affects her ability to lift items to clean"). The applicant's psychological condition is also apparent from the record. The psychological evaluation discusses not only her present condition, but also her family history as it relates to her current psychological health. The psychological evaluation stresses the spouse's need for her husband, as a "supportive husband, father, grandfather, and protector... [who] has treated her with kindness and respect" especially given her background of "abandonment by her natural mother and sexual abuse by her stepfather" as well as her biological father's recent death. *Psychological evaluation, May 26, 2009. The record establishes the applicant's spouse has been taking medication for her "depressive symptoms and anxiety-related stressors" which include Cymbalta and Zyprexa. Id., see also prescriptions from Houston Street Pharmacy, April 9, 2009. Given the evidence of record on this case, the AAO concludes that the applicant has shown his spouse's psychological / emotional, medical, and financial hardships, when considered cumulatively, constitute extreme hardship upon separation from the applicant.*

There is also sufficient evidence of record to demonstrate the applicant's spouse would suffer extreme hardship upon relocation to Mexico. The applicant's spouse claims the applicant resides in [REDACTED] Mexico, which is confirmed by the applicant's Form G-325A, Biographical Information, as his last residence before living in the United States. See statement of applicant's spouse, May 18, 2009, see also Form G325A, Biographical Information, February 2, 2008. The spouse expresses she, a U.S. Citizen, is afraid to live in Mexico because "violence and influenza continue to devour the country." See statement of applicant's spouse, May 18, 2009. Her fears about safety issues in the specific area where the applicant resides, [REDACTED] Mexico, are

substantiated by a Travel Warning issued by the U.S. Department of State. Therein, the U.S. Department of State reports:

You should be especially aware of safety and security concerns when visiting the northern border states of [REDACTED]. Much of the country's narcotics-related violence has occurred in the border region... Travelers on the highways between [REDACTED] and the United States (notably through [REDACTED] and [REDACTED]) have been targeted for robbery that has resulted in violence. They have also been caught in incidents of gunfire between criminals and Mexican law enforcement.

*Travel Warning: Mexico, U.S. Department of State, April 22, 2011.* The applicant's concerns about medical care in Mexico, particularly given her medical and psychological conditions, and her need for affordable medical care given her financial situation, are also substantiated by the U.S. Department of State in a Country Specific Information report, which indicates:

Adequate medical care can be found in major cities. Excellent health facilities are available in Mexico City, but training and availability of emergency responders may be below U.S. standards. Care in more remote areas is limited. Standards of medical training, patient care and business practices vary greatly among medical facilities in beach resorts throughout Mexico... Additionally, U.S. citizens should be aware that many Mexican facilities require payment 'up front' prior to performing a procedure. Hospitals in Mexico do not accept U.S. domestic health insurance or Medicare/Medicaid and will expect payment via cash, credit, debit card or bank transfer.

*Mexico: Country Specific Information, U.S. Department of State, February 23, 2011.* Considered in the aggregate, the spouse's objective concern over living [REDACTED], her medical and psychological conditions, and her financial situation, establish that she would face extreme hardship if the applicant's waiver request is denied and she relocates to Mexico with the applicant.

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.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Moralez* at 300.

In *Matter of Mendez-Moralez*, 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 section 212(h)(1)(B) 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 include the extreme hardship to the applicant's spouse, the applicant's good moral character as evidenced by letters from family and friends, family ties in the United States, and his reformation as evidenced by a letter from the Smith County Community Supervision and Corrections Department. The unfavorable factors include his initial entry without inspection, his periods of unlawful presence and employment, and his convictions for driving under the influence.

Although the applicant's violations of immigration law and convictions cannot be condoned, the positive factors in this case outweigh the negative factors. 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.