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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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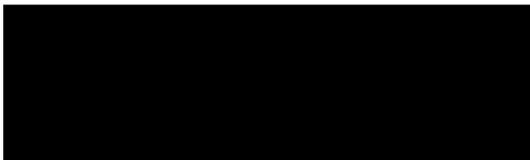
Office: MEXICO CITY

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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, Mexico City. The matter 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 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 is married to a U.S. citizen and 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 with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated June 19, 2009.

On appeal, counsel contends the field office director failed to properly consider all of the evidence of hardship in the aggregate and failed to include the two U.S. citizen children as qualifying relatives. In addition, counsel contends the applicant suffered from a serious heart condition throughout his childhood and that the couple's daughter now suffers from the same heart condition, requiring her to remain in the United States. Counsel also contends the applicant's wife has suffered extreme financial hardship and has had to request food stamps since her husband departed the United States.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on March 12, 2005; copies of the birth certificates of the couple's two U.S. citizen children; an affidavit and letters from [REDACTED] an affidavit from the applicant; a letter from the couple's child's physician and copies of medical records; copies of tax returns, bills, and other financial documents; a letter from the applicant's employer; letters of support; copies of photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

....

(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.

In this case, the record shows, and counsel concedes, that the applicant entered the United States without inspection in July 2003 and remained until March 2008. *Memorandum of Law* at 2-3, dated June 19, 2009. The applicant accrued unlawful presence of over four years. He now seeks admission within ten years of his 2008 departure from the United States. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of his last departure.

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.

In this case, the applicant states that he grew up in a very small village in Mexico. He states that he finished school when he was twelve years old “because there was no more school.” He also states that there was no clinic or hospital. He states that when he was little, he was born with a hole in his heart. According to the applicant, when he was three years old, the hole started getting worse and he got very sick. The applicant states that he lost a lot of weight and that the doctors told his mother that he would not live. The applicant contends his mother refused to believe it and took him to different doctors and hospitals in Guadalajara, Morelia, and Mexico City, and that his father went to the United States to work in order to earn enough money to afford the medication he needed. The applicant states that when he was nine years old, “a miracle happened,” and the hole in his heart closed. He states he came to the United States when he turned eighteen years old so that he could work and pay his mother back for the money and time she spent raising him and making him healthy. According to the applicant, his daughter, [REDACTED], has been diagnosed with the same heart problem. He states that there are still no doctors in his village in Mexico and that she needs to grow up safely, near a school and a hospital. *Affidavit of Juan Brenes*, dated February 12, 2008.

The applicant’s wife, [REDACTED] states that since her husband departed the United States, she and her two daughters have suffered extreme hardship. [REDACTED] states that she met and started dating her husband in high school and that when she was sixteen years old, she told her parents she had met her

husband and wanted to marry him. She states that she ran away from home to live with him, that they got pregnant with their first child, and that they moved back in with her parents so she could graduate from high school. [REDACTED] contends that she and her husband are now married and have another daughter together. According to [REDACTED] their older daughter, [REDACTED] was born with a heart murmur, has a hole in her heart, and has liquid coming out of a vein. She contends the doctors do not know if the hole will close by itself or if [REDACTED] will need an operation. [REDACTED] states that she has not been able to make it on her own financially since her husband's departure and that she has moved back in with her parents who have their own financial problems. She states she has had to apply for food stamps in order to feed her family. She states she cannot live in Mexico because her entire family lives in the United States. She contends she is a young mother and needs the security of knowing that her own mother is close by. [REDACTED] also states that she had never been to Mexico and that her first time on an airplane was when she brought [REDACTED] to meet her husband's mother in Cerrito Colorado, Mexico, where her mother-in-law lives on a farm. She states that there are no doctors in the village where her husband's family lives and that she would be scared to live there because of [REDACTED] heart condition. She states that when they went to her husband's appointment in Ciudad Juarez, [REDACTED] had a fever and said her ear hurt. According to [REDACTED] after the twenty-two hour bus ride back to Michoacán, they took another forty-five minute bus ride to the closest doctor who said [REDACTED] had a bad ear infection, caused by the change in environment. The doctor reportedly stated that he noticed Yuliana's heart problems and that the infection was bad for her heart. [REDACTED] claims they had to go back to the doctor nine days later and that [REDACTED] also had a stomach infection that was purportedly caused by drinking the water and eating the local food. *Letters from* [REDACTED] [REDACTED] dated March 11, 2010, and undated; *Affidavit of* [REDACTED] [REDACTED] dated February 12, 2008.

A letter from [REDACTED] physician states that she has been followed by a pediatric cardiologist due to pulmonary stenosis, patent foramen ovale, and aortic regurgitation. According to the physician, the pulmonary stenosis may get worse over time and the physician advised the parents to stay with [REDACTED] in the United States. *Letter from* [REDACTED] [REDACTED], dated July 21, 2009. A more recent letter from a different physician states that [REDACTED] has a heart abnormality called valvar pulmonary stenosis. According to the physician, "Its severity has increased to the point at which she will benefit from the valve functioning better. This should be accomplished by ballooning this valve in the cardiac catheterization laboratory." The physician contends it would be a great benefit to [REDACTED] if her father could be present during this procedure. *Letter from* [REDACTED] [REDACTED] dated April 21, 2011. Information regarding pulmonary stenosis is contained in the record and states that "regular follow-up care . . . should continue throughout the individual's lifespan." Copies of [REDACTED] medical records show that she has a defect in the atrial septum, has been regularly followed for her pulmonary stenosis, and that there is a history of heart murmur in her father.

After a careful review of the record, the AAO finds that the applicant's wife, [REDACTED] will suffer extreme hardship if the applicant's waiver application were denied. The record shows that [REDACTED] [REDACTED] was born in the United States and that the couple has two U.S. citizen children. Although hardship to the applicant's children can be considered only insofar as it results in hardship to [REDACTED]

██████████ the only qualifying relative in this case,¹ the AAO finds that ██████████ medical condition poses an extreme hardship to ██████████. The record shows that ██████████ has had heart problems since she was born and the most recent letter in the record from her physician states that the severity of her heart abnormality has increased to the point that she needs to undergo a “ballooning [of the] valve in the cardiac catheterization laboratory.” *Letter from ██████████*. In addition, the record shows that ██████████ has stayed at home caring for her children and that the applicant was the sole income earner for the family. *2007 U.S. Individual Income Tax Return (Form 1040)*, dated February 2, 2008 (indicating the applicant earned \$60,189 in wages and listing ██████████ occupation as homemaker); *2006 U.S. Individual Income Tax Return (Form 1040)*, dated February 10, 2007 (indicating the applicant earned \$50,342 in wages and listing ██████████ occupation as homemaker). According to ██████████ she now has no income, she and her daughters have moved back in with her parents, and she has applied for public assistance, a copy of which is included in the record. Moreover, ██████████ contends her entire family lives in the United States and she has never lived in Mexico, having only visited once. Considering all of the evidence in the aggregate, the AAO finds that if the applicant returned to Mexico and ██████████ decided to stay in the United States, the effect of separation from the applicant goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Moreover, moving to Mexico to avoid separation would be an extreme hardship for ██████████. As stated above, ██████████ was born in the United States and has visited Mexico only once. In addition, ██████████ physicians have urged her to stay in the United States with her parents for continued medical care. *Letter from ██████████, supra; Letter from ██████████*. Documentation in the record states that she will require follow-up care for the rest of her life. The AAO acknowledges that although adequate medical care can be found in major cities in Mexico, care in more remote areas is limited and may be below U.S. standards. *U.S. Department of State, Country Specific Information, Mexico*, dated February 23, 2011. Therefore, relocating to Mexico would disrupt the continuity of ██████████ medical care. Moreover, the AAO takes administrative notice that the applicant is from and is currently living in Michoacán, Mexico, a state to which the U.S. Department of State urges U.S. citizens to defer non-essential travel. *U.S. Department of State, Travel Alert, Mexico*, dated April 22, 2011. Considering all of these factors cumulatively, the AAO finds that the hardship ██████████ would experience if she moved to Mexico to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that ██████████ faces extreme hardship if the applicant is refused admission.

¹ The AAO notes that counsel incorrectly contends that the field office director failed to include the applicant’s children as qualifying relatives. *Memorandum of Law* at 2, dated June 19, 2009. The statute specifies that the Secretary of Homeland Security has the sole discretion to waive inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), if the applicant shows extreme hardship “to the citizen or lawfully resident spouse or parent of such alien.” Therefore, the only qualifying relative in this case is ██████████ the U.S. citizen spouse of the applicant.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's unlawful presence in the United States and periods of unauthorized employment. The favorable and mitigating factors in the present case include: significant family ties in the United States including his U.S. citizen wife and two children; the extreme hardship to the applicant's wife and her children if he were refused admission; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.