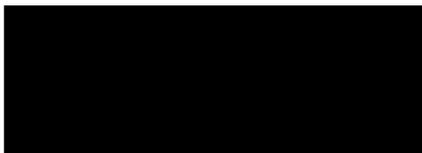


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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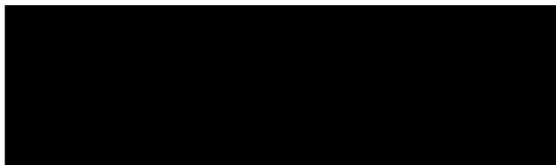
DATE: OCT 11 2011 Office: CIUDAD JUAREZ

FILE: 

IN RE: 

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,


for Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Officer Director, Ciudad Juarez, 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 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 (INA or 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 readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) based on extreme hardship to his U.S. citizen wife.

In a decision dated January 30, 2009, the Field Office Director concluded that the required standard of proof of extreme hardship to the applicant's U.S. citizen spouse was not met and the application was denied accordingly.

The applicant in his appeal states that the extreme hardship standard has been met and requests a review of the evidence of record in its entirety. On appeal, in addition to a legal brief submitted by the attorney of record, the applicant submitted a statement by his U.S. citizen spouse, medical records for members of the applicant's spouse's family, a letter written to a member of Congress by the applicant's spouse, photographs of the applicant's children, a letter from the applicant's spouse's work colleague and country conditions information about Mexico.

In addition to the documentation submitted on appeal, the record contains an approved Petition for Alien Relative (Form I-130) filed on the applicant's behalf by his U.S. citizen wife, Application for Waiver of Grounds of Inadmissibility (Form I-601), Affidavit of Support (Form I-864), Biographical Information forms (Forms G-325A) for the applicant and his spouse and the attached documentation including a legal brief by the applicant's previous attorney, two additional letters from the applicant's spouse, letters from the applicant's spouse's family members, a letter from the applicant's previous employer in Michigan, utility and insurance bills, bank statements, medical records for the applicant's children, a birth certificate for one of the applicant's children, marriage certificate for the applicant and his spouse, divorce records from the applicant's previous marriage, and documentation of the applicant's criminal record in Michigan.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The facts of this case are as follows. The applicant reports that he first entered the United States in 1989 without inspection and remained unlawfully until he was arrested by immigration officials on June 12, 1992. He was granted Voluntary Return to Mexico. The applicant states that he returned to Mexico in 1992 and then re-entered the United States without inspection in 1993 and remained until December 2007, when he returned to Mexico voluntarily at his own expense. While residing in the United States, the applicant was criminally charged on May 25, 2002 with "Offering to Engage the Services of Another for Act of Prostitution," a misdemeanor, in the 36th

District Court of Detroit, Michigan. The applicant pled guilty, paid a \$300 fine, and the case was taken under advisement for 12 months. On June 30, 2003, the charges were dismissed.¹

Section 212(a)(9) of the Act provides:

(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.

(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 applicant's time in unlawful presence began to accrue on April 1, 1997, the effective date of the unlawful presence provisions under the Act, and ran through his departure from the United States in 2007. The applicant was unlawfully present in the United States for one year or more. In applying for an immigrant visa, the applicant is seeking admission within ten years of his last departure from the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year. The applicant has not disputed his inadmissibility. He is eligible to apply for a waiver of this ground of inadmissibility under INA § 212(a)(9)(B)(v), as the spouse of a United States citizen. In order to qualify for this waiver, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his spouse. And, if he meets that requirement, he must then prove that he merits a waiver in the exercise of discretion.

The applicant's qualifying relative in this case is his U.S. citizen wife. The AAO notes that only hardship to the applicant's U.S. citizen spouse can be taken into account in the determination of extreme hardship. Congress did not include hardship to an applicant's children as a factor to be

¹ We need not determine whether "Offering to Engage the Services of Another for Act of Prostitution" under Michigan Law is a crime involving moral turpitude, which would render the applicant inadmissible under INA § 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I) because this conviction qualifies for the petty offense exception under INA § 212(a)(2)(A)(ii)(II), 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

considered in assessing extreme hardship in cases under INA § 212(a)(9)(B)(v) for waivers of unlawful presence. Hardship to the applicant's children will not be separately considered, except as it may affect the applicant's 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 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 states that his U.S. citizen wife would suffer emotional and financial hardship if he were not admitted to the United States. The applicant's spouse states in a letter included in the record that she "breaks down on a daily basis" and is overwhelmed due to the hardship she experiences raising two young boys without their father. The applicant's spouse states that she works in the restaurant industry and mostly works evenings. She states that she previously relied on the applicant to be home in the evening to care for the family. Now she asserts that she must leave work if there is an emergency with the children. She submitted a letter from a coworker who asserts that she has been experiencing "overwhelming stress and frustration" and that the "strain of the situation is making it more difficult for her to perform at her best." The AAO notes that the applicant's spouse does not state where she is currently employed nor does she provide her income.

From the evidence submitted, it appears that the applicant's spouse's parents assist her, but their support is limited by the needs of the other family members. The record indicates that the applicant's spouse's extended family has documented health problems that prevent them from assisting her. The record indicates that the applicant's spouse's sister and brother both suffer from depression and were hospitalized for suicide attempts in the two years prior to the submission of the waiver application. Moreover, the evidence illustrates that the applicant's spouse's grandmother suffered from a heart attack during the same time period. The applicant's attorney has mentioned other family health problems, but those problems are not documented in the record.

The record illustrates that the applicant's spouse has spent her entire life in Michigan, aside from the five months that she spent in Mexico with the applicant after the submission of his waiver application, and is part of a close-knit family, who reside entirely in that state. The applicant's spouse reports that she was not raised by her biological mother. She states that her mother was involved with drugs and abandoned her at a young age. She states that she is emotionally affected by the fact that her children will now know the pain of not being raised by one of their biological parents. She states that if it were not for the country conditions in Mexico, namely the health concerns that she has for her children and her fear of the warnings that the U.S. government has issued for the safety of Americans in Mexico, she would take her children to see their father. The applicant submitted extensive evidence of the country conditions in Mexico, highlighting the high level of violence and crime.

To demonstrate financial hardship, the applicant's spouse states that she was unemployed for an extended period of time due to consequences of the economic recession and the fact that Michigan was hit particularly hard economically. She states that she is now only employed part-time. The applicant's spouse asserts that if the applicant were in the United States, they would both work and the family would be able to count on two incomes. The applicant submitted letters from numerous members of his wife's family to illustrate that he provided financially for her before he departed the United States. He also submitted a letter from his former employer stating that he was employed full-time for over ten years at the Germack Pistacio Company in Detroit, Michigan. Also submitted were bills and receipts illustrating the expenses of the household. The applicant's spouse also asserts that she must now rely on state health insurance for her children, but the AAO does not note any independent evidence of this insurance in the record. Taken individually, neither the financial nor the emotional hardship experienced by the applicant's spouse would be considered extreme, but when considered in the aggregate, it rises to the level required by the statute.

As to the hardships of relocation, the applicant's spouse, a native of Michigan who does not speak or read Spanish, moved to Mexico with her two young sons in order to be with the applicant, only to return to the United States after five months upon finding that the hardship there was too severe. The applicant's spouse cited concerns over her children's health as her utmost concern that drove her to return to the United States. She submitted pictures showing the children living in a house that appeared to lack basic amenities that they had previously relied upon, such as a refrigerator.

In addition to indicating that she was terrified by the sanitary conditions in Mexico, the applicant's spouse also states that she was rattled by the substandard level of care given to her children by health professionals there. In her statement, the applicant's spouse reported that she had to rely on untrained individuals to administer shots to her children and she was worried about the lack of standards on baby formula for her then eight month old son and the food available for her children. The record contains substantial evidence of the safety and health concerns present in Mexico, especially in rural areas outside of Mexico City where the applicant and his spouse were residing. Although it is not clear from the record that the applicant's spouse was affected by the safety concerns in Mexico, the applicant's spouse was demonstrably affected by the substandard living conditions and health care options for her children.

The applicant's spouse also stated that the \$10 per day that her husband was able to make in Mexico could not support their family. She relayed in her statement that she could not find work because she does not speak Spanish and she was worried about leaving the care of her two young boys in others hands. Additionally, while in Mexico, the record indicates that the applicant's spouse was separated from her family in the United States at a time of great need by them, namely the suicide attempt by her brother. Again, taken individually, those hardships would not be extreme, but when considered in the aggregate, they rise to the level required by the statute.

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 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.

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 must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility 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 in the applicant's case include the critical support that he provides to his U.S. citizen wife and children, as documented by the numerous letters in the record written by his wife's family members, and the rehabilitated moral character of the applicant, as documented by his effort to voluntarily rectify his immigration status in order to better provide for his family. Additionally, the AAO takes particular note of the applicant's qualifying spouse's extensive family ties in Michigan and the unique and compelling health concerns of those family members.

The unfavorable factors include the applicant's criminal record, his extensive unlawful presence in the United States, and his unlawful reentry after he accepted Voluntary Return to Mexico in 1992. It is also notable that the applicant did not submit a statement explaining his immigration and criminal history and the hardship to his wife. Nevertheless, the numerous statements by the applicant's spouse and her family members document the applicant's good moral character. The

applicant's violations of immigration law cannot be condoned, but 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.