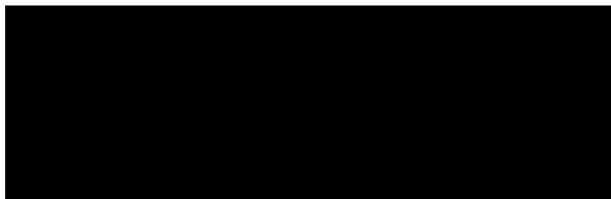


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

Date: **OCT 12 2011**

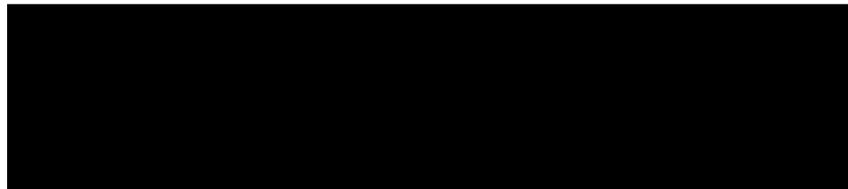
Office: MEXICO CITY

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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,

fr

Perry Rhew
Chief, Administrative Appeals Office

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

The record establishes that the applicant is a native and citizen of Mexico who entered the United States without authorization in October 1998 and did not depart the United States until August 2007. The applicant accrued unlawful presence from September 1, 1999, when he turned 18 years of age, until August 2007. The applicant 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 seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident parents.

The district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated May 12, 2009.

On appeal, counsel for the applicant submits the following: a brief; a statement from the applicant; statements from the applicant's lawful permanent resident father and mother; medical documentation pertaining to the applicant's parents; financial documentation; photographs; and letters in support from the applicant's family and friends. 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) 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. The applicant's lawful permanent resident parents are the *only* qualifying relatives in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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-Morales*, 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 lawful permanent resident parents contend that they will suffer emotional and financial hardship were they to remain in the United States while their son resides abroad due to his inadmissibility. The applicant’s father explains that four of their children reside in the United States legally and being separated from the applicant, their eldest son, is causing him and his wife hardship. They note that the applicant is by himself in Mexico with no family support. In addition, the applicant’s father explains that since entering the United States in 1998, the applicant played a critical role in helping his father and mother financially but since his departure, he has been unable to obtain gainful employment to assist his parents and moreover, he is now dependent on them to support him, thereby causing his parents financial hardship. Finally, the applicant’s father and mother detail that they have been sick since being separated from their applicant and they need the applicant to help care for them. *Letters from* [REDACTED], *Affidavit of Fact of* [REDACTED] dated September 28, 2007 and *Brief in Support of Appeal*.

To begin, over thirty letters in support have been provided from the applicant’s siblings, his extended family and his friends, attesting to the critical role the applicant played in his parents’ lives, both emotionally and financially, prior to departing the United States after a period of over nine years, and confirming that the applicant’s parents are suffering extreme hardship as a result of the applicant’s inadmissibility. In addition, the record establishes the applicant’s financial contributions to the household prior to his departure, working with [REDACTED] from November 1998 until August 2007. *Letter from* [REDACTED], *Administrative Assistant*, [REDACTED], dated June 3, 2009. Moreover, evidence of the financial contributions the applicant’s father is making to his son in Mexico has been submitted. Finally, medical documentation has been provided establishing the applicant’s parents’ numerous visits to the doctor since the applicant’s departure from the United States.

As noted above, separation of an alien from family living in the United States can in certain cases be the most important single hardship factor. The applicant continuously resided in the United States with his parents and siblings for almost 10 years. The record establishes the close bond the applicant has with his parents and his siblings as well as his long-term gainful employment and financial contributions to the family when he resided in the United States. The AAO concludes that a separation at this time would cause hardship beyond that normally expected of one facing the removal of a child. The applicant's parents contend that they need the emotional and financial support that the applicant provides and the applicant's long-term absence would be an extreme hardship for them. The AAO thus concludes that based on the cumulative evidence provided, it has been established that the applicant's parents will suffer extreme hardship if the applicant's waiver is not granted.

With respect to relocating abroad, counsel notes that the applicant's parents' four children live in the United States and relocating abroad would mean long-term separation from their children, their community, their home and gainful employment. *Supra* at 2. In addition, the applicant's father explains that he is in his 50s and did not even finish elementary school in Mexico, and thus he will not be able to find a good paying job in Mexico that will permit him to support himself and his family. *Supra* at 2.

The record establishes that the applicant's father has resided in the United States for over twenty years. The applicant's parents' family, including their children and extended relatives, reside in the United States. Based on the declarations provided by the applicant's siblings, the family is close-knit and rely on each other. Were the applicant's parents to relocate abroad to reside with the applicant, they would lose ties to their family, their long-term gainful employment and their community. They would have to start over in a country in which they have not lived in over 20 years, at a time when they are reaching retirement age. Based on a totality of the circumstances, the AAO finds that relocating abroad to reside with the applicant would cause the applicant's parents extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his parents would suffer extreme hardship were the applicant unable to reside in the United States due to his inadmissibility. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 favorable factors in this matter are the extreme hardships the applicant's parents and siblings would face if the applicant were to remain in Mexico, regardless of whether they accompanied the applicant or remained in the United States, community ties, gainful employment prior to departing the United States, support letters from friends, family and his U.S. employer, church membership, the apparent lack of a criminal record and the passage of more than twelve 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 and employment while in the United States.

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

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