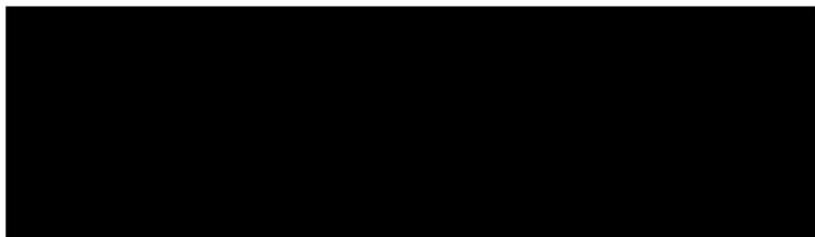


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

H6



Date: **OCT 25 2011**

Office: **MEXICO CITY, MEXICO**

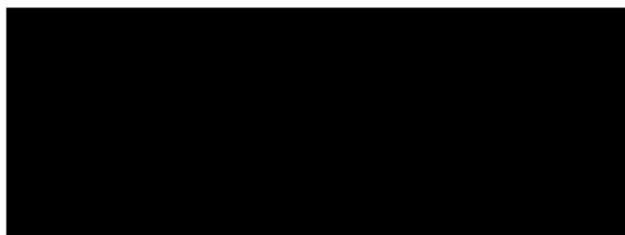
FILE: 

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)

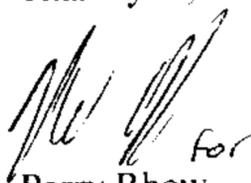
ON BEHALF OF APPLICANT:



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,


for
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 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 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 ten years of her last departure from the United States. The applicant is married to a United States citizen and is the mother of three children and four stepchildren. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 in the United States with her spouse and daughter.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 23, 2009.

On appeal, the applicant, through counsel, claims that the applicant's spouse will suffer extreme hardship if the applicant "is not allowed to immigrate to the United States." *Counsel's appeal brief*, dated June 10, 2009.

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant and her husband in English and Spanish¹; letters of support for the applicant and her husband; a psychological evaluation for the applicant's husband; medical documents for the applicant and her husband; tax documents, rent receipts, utility and household bills, insurance documents, and a lease agreement; an employment verification and earnings statements for the applicant's husband; an article on swine flu in Mexico; and country conditions reports on Mexico. The entire record was reviewed and considered, with the exception of the Spanish language statement, in arriving at a decision on the appeal.

Section 212(a)(9)(B) 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.

....

¹ Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As a statement from the applicant's husband is in Spanish and is not accompanied by an English-language translation, the AAO will not consider it in this proceeding.

- (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 [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 the present case, the record indicates that the applicant entered the United States in April 2000 without inspection. In August 2007, the applicant departed the United States.

The applicant accrued unlawful presence from April 2000, the date she entered the United States without inspection, until August 2007, when she departed the United States. The applicant is seeking admission into the United States within ten years of her August 2007 departure from the United States. The applicant is, therefore, 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 more than one year and seeking admission within 10 years of her departure from the United States.

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. Hardship to the applicant or her children or stepchildren can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 United States Citizenship and Immigration Services (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 of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. *Supra* at 565. 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.

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 counsel’s appeal brief, counsel states the applicant’s husband cannot live in Mexico because he believes he “will have a better future in the United States due to the many educational opportunities available in [the United States], as well as the medical services.” Counsel also states that the “political conditions in Mexico, have recently taken on dangerous levels, especially for those unfamiliar with that country.” Counsel claims that if the applicant’s husband “were to go to Mexico at the present time, the political conditions would be a cause of concern to him, causing him extreme stress and anxiety.” The AAO notes that on April 22, 2011, the Department of State issued a travel warning to United States citizens thinking of traveling to Mexico. This warning is focused on northern Mexico, i.e., along the United States-Mexico border, and the record establishes that the applicant resides in Baja California, Mexico, which is on the United States-Mexico border. The travel warning clearly states that violence along the U.S.-Mexico border has increased. “Much of the country’s narcotics-related violence has occurred in the border region.” “Large firefights between rival TCOs or TCOs and Mexican authorities have taken place in towns and cities in many parts of Mexico, especially in the border region. Firefights have occurred in broad daylight on streets and in other public venues, such as restaurants and clubs.

During some of these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area." Additionally, "[c]arjacking and highway robbery are serious problems in many parts of the border region and U.S. citizens have been murdered in such incidents." The travel warning states "[t]he location and timing of future armed engagements cannot be predicted. You are urged to defer travel to those areas mentioned in this Travel Warning and to exercise extreme caution when traveling throughout the northern border region." Additionally, counsel states the applicant's husband "has an extended family consisting of four older children and their families living in the United States," and the applicant and her husband "adore their grandchildren." In a psychological evaluation dated June 3, 2009, [REDACTED] reports that the applicant's husband has resided in the United States for many years, and "he has no relationship with the only sibling he has in the United States, nor with his siblings in Mexico." The AAO notes the applicant's husband's concerns regarding the difficulties he would face in relocating to Mexico.

Counsel states the applicant's husband will encounter hardship in Mexico because of the "economic situation" and "high unemployment rate." [REDACTED] states that the applicant's husband would lose his job if he relocated to Mexico, he "no longer knows Mexico enough to succeed and function there," he has "no marketable skills," he "has no family in Mexico that could provide any type of support for him and [the applicant]," he "would not be able to afford to support [the applicant] nor himself," and he "would not be able to provide for his own medical needs, nor for [the applicant's]." The AAO notes that [REDACTED] diagnosed the applicant's husband with a major depressive disorder, an adjustment disorder with mixed anxiety and depressed mood, and an anxiety disorder. However, the AAO notes that the record does not contain any documentary evidence establishing that the applicant's husband cannot receive treatment for his mental health conditions in Mexico, that he has to remain in the United States to receive treatment, or that his mental health conditions would affect his ability to relocate. The AAO notes the employment and mental health concerns of the applicant's husband.

The AAO acknowledges that the applicant's husband has been residing in the United States for many years and that he may experience some hardship in relocating to Mexico. Based on the applicant's spouse's lack of ties to Mexico, the security concerns in Mexico, his separation from his family in the United States, financial issues including losing his employment in the United States, and his mental health issues, the AAO finds that the applicant's husband would suffer extreme hardship if he were to join the applicant in Mexico.

Regarding the hardship the applicant's husband would suffer if he were to remain in the United States, in a statement dated June 8, 2009, the applicant states her husband needs her and she needs him. She states she misses her "husband very much. [She] cannot sleep at night. [She] [cries] at nights [sic]." Counsel states the applicant's husband worries "about the safety and welfare of [the applicant] in Mexico." As noted above, the applicant currently resides in Baja California, Mexico, which is an area mentioned in the Department of State travel warning for Mexico. Counsel also states that the applicant and her husband "depend on each other for love, emotional and psychological support, and financial well-being. A separation would mean jeopardizing the stability in all realms, of this family." Counsel states the applicant's husband "has and will continue to have enormous difficulty, emotionally and psychologically dealing with the separation from [the applicant]." In a statement dated June 10, 2009, the applicant's

husband states he is suffering from depression. As noted above, [redacted] diagnosed the applicant's husband with a major depressive disorder, an adjustment disorder with mixed anxiety and depressed mood, and an anxiety disorder. [redacted] reports that the applicant's husband's symptoms include "extreme nervousness; sadness; desperation; excessive smoking; constantly [waking] up during the night and [difficulty] going back to sleep; no appetite, eating once per day, often times will not eat at all[;] and concentration problems." The applicant states her husband "is getting thinner and thinner because he works at night, he has to cook for himself, sometimes he is too tired to cook and eat. [Her] husband is very nervous and that worries [him] a lot." Counsel states the applicant's husband's mental health "is affecting his ability to function on simple daily tasks." [redacted] indicates that the applicant's husband "endorsed active suicide ideation." The AAO acknowledges that the applicant's husband is experiencing emotional issues because of the separation from the applicant.

Counsel states the applicant takes care of her husband by preparing his special diet and helping him with his medical treatment. Counsel also states the applicant "cooks for [her husband], washes his clothes, [and] takes care of him. She reminds him of his medicine time. She helps him exercise. She is always looking after him." The applicant's husband states he now has to do all the household chores alone. The AAO notes that the record establishes that the applicant's adult daughter resides with the applicant's husband. *See psychological evaluation by [redacted]* The applicant's husband states he is "afraid the children might lose interest in school and lower their grades because [the applicant] is not with them to help them." The applicant states their children and grandchildren are suffering from not seeing her. The AAO acknowledges that the applicant's children, stepchildren, and grandchildren may be suffering some hardship in being separated from the applicant; however, the AAO notes that the applicant's children, stepchildren, and grandchildren are not qualifying relatives, and the applicant has not shown that they will experience challenges that elevate her husband's difficulty to an extreme hardship. However, the AAO notes the concerns for the applicant's children, stepchildren, and grandchildren. Additionally, the AAO notes the applicant's husband's concerns.

[redacted] reports that the applicant's husband "will reach a point where he will no longer be able to pay all of his bills, placing him in legal and financial problems." The applicant states their "money is running out." The applicant's husband states he visits the applicant in Mexico, "but it is getting more and more expensive and more and more difficult to separate from her each time [he] [goes]." [redacted] reports that the applicant's husband can only afford to visit the applicant once a month. Counsel also states the applicant's husband "will encounter difficulty risking losing his job for taking time off to visit his family if he must continuously travel back and forth to visit [the applicant]." The applicant's husband states he is working hard to support two households. Counsel states that by himself, the applicant's husband could not "provide adequate health, dental, and many other benefits for his family." [redacted] reports that the applicant has been unable to find employment in Mexico, and her husband is paying her rent in Mexico. Additionally, [redacted] reports that the applicant's husband is paying for the applicant's medical care in Mexico, and in the United States, she would have "health insurance that covers all of her medical needs." The applicant's husband states the applicant "suffers from diabetes and needs [his] care and attention on a full-time basis." The AAO notes that the record establishes that the applicant was being treated for diabetes in the United States. *See clinic progress record, dated October 27, 2006.*

While the AAO notes the applicant's husband's claims of financial hardship, it does not find the record to support them. The AAO finds the record to include some documentation of the applicant's husband's income and expenses; however, this material offers insufficient proof that he is unable to support himself in the applicant's absence. Additionally, the AAO notes that other than [REDACTED] statement, the applicant has submitted no evidence to establish that she is unable to obtain employment in Mexico and, thereby, reduce the financial burden on her husband. However, even though the record fails to establish that the applicant's spouse is unable to meet his financial obligations, the AAO notes the applicant's husband's financial concerns.

The AAO finds that when the applicant's husband's emotional and financial issues are considered in combination with his concern for the applicant's welfare in Mexico as well as the normal hardships that result from the exclusion of a loved one, the applicant has established that her husband would experience extreme hardship if he remained in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h)(1)(B) 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-Morales, 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 adverse factors in the present case include the applicant's entry without inspection and unlawful presence. The favorable and mitigating factors are the applicant's United States citizen husband, children, and stepchildren; the extreme hardship to her husband if she were refused admission; the absence of a criminal record, and the letters of support.

The AAO finds that, although the immigration violations committed by the applicant are 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

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