

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY**

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

HG



DATE: OCT 27 2011

Office: SALT LAKE CITY, UT

FILE: [REDACTED]

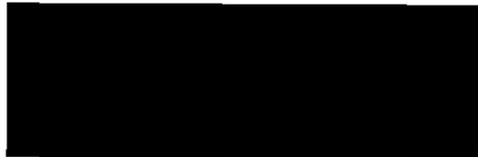
IN RE:

Applicant: [REDACTED]

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.

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Salt Lake City, Utah, 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 admission within ten years of his last departure from the United States. The applicant is married to a United States citizen and 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.

The Field Office Director found 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 Field Office Director*, dated January 2, 2009.

On appeal, counsel asserts that the applicant's spouse would face extreme hardship if the waiver application is denied. Counsel submits a brief and additional evidence. *See Form I-290 and attachments.*

The record includes, but is not limited to, a statement from the applicant's spouse describing the hardships claimed; a letter from the applicant's spouse's parents; earnings statements for the applicant's spouse; a 2007 income tax return and Form W-2 Wage and Tax Statements; psychological assessment of the applicant's spouse; a medical statement and records pertaining to the applicant's spouse; a letter from the applicant's spouse's former bishop; college transcripts for the applicant's spouse; and counsel's brief. The entire record was reviewed and considered 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.

In the present application, the record indicates that the applicant entered the United States on August 5, 2000 as a B-2 nonimmigrant, with authorization to stay until February 4, 2001. On June 18, 2008, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant and the same day the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On October 7, 2008, the applicant departed the United States for Mexico under a grant of advance parole. He returned to the United States on October 12, 2008 and has not departed again.

The applicant accrued unlawful presence from November 28, 2004, the day after his 18th birthday, until June 18, 2008 when he filed his Form I-485 application. The applicant is seeking admission into the United States within ten years of his 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 having been unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 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.

On appeal, counsel asserts that the applicant’s spouse will suffer extreme mental and emotional hardship as a result of separation. Counsel asserts that the applicant’s spouse is suffering from severe psychological disorders. Counsel points to a diagnosis of depression and anxiety by [REDACTED], the applicant’s spouse’s primary care physician, and a psychological evaluation from [REDACTED], stating that the applicant’s spouse suffers from severe depression, anxiety, and related psychological disorders.

In a November 12, 2008 medical statement [REDACTED] states that the applicant’s spouse has tendencies toward depression and anxiety and that the removal of the applicant would contribute to those tendencies. [REDACTED] also indicates that he previously treated the applicant’s spouse for depression and anxiety in February and March 2006. The medical notes from November 12, 2008 indicate that the applicant’s spouse came to see [REDACTED] for depression, difficulty sleeping, guilt feelings, a lack of energy, loss of concentration, changes in appetite and psychomotor agitation; and that he prescribed Zoloft. Medical notes from February 28, 2006 indicate that [REDACTED] first saw the applicant’s spouse for these same symptoms in 2006 and that she was also suffering from bulimia.

[REDACTED] concludes that the applicant’s spouse’s chronic anxiety and depression have not abated through two years of consistent medication management; that her anxiety patterns are more intense and intractable than for most people diagnosed with clinical anxiety; that evidence of excessive compulsive

features [cutting herself when emotionally overwhelmed] and eating disorder behavior suggests significant problems with emotional regulation and coping skills; and she needs the emotional support of both her spouse and her family and she would experience severe emotional trauma if she and her spouse were separated, or were she to leave her family and relocate to Mexico with the applicant, if the waiver application was denied. [REDACTED] concludes that the applicant's spouse's profile is consistent with underlying symptoms of clinical depression and anxiety and indicates significant sadness and mental slowing, and evidence of physical malaise, fatigue and difficulty concentrating.

The AAO finds that when the applicant's spouse's fragile emotional state and her difficulty in coping with stressful situations are considered with the normal hardships created by separation, the applicant has established that his U.S. citizen spouse would experience extreme hardship if the waiver application is denied and she remains in the United States.

Regarding hardship in Mexico, counsel states that the applicant's spouse cannot speak Spanish and would have difficulty adjusting to the culture Mexico; that her family members all reside in the United States; that it would be stressful for her to leave a disabled sister; and that she would be deprived of the opportunity of pursuing her career goal of becoming a Registered Nurse. [REDACTED] indicates in his evaluation that were the applicant's spouse to move to a completely different social and cultural environment where she would not understand the language, she would struggle greatly to maintain emotional and mental control, and there would be a significantly increased likelihood of self-harming behavior and increased suicidal ideation; and that leaving her job and her nursing career, would promote a significant increase in her current emotional distress and promote emotional trauma. The AAO notes the applicant's spouse's emotional state and her lack of coping mechanisms, which would adversely impact her ability to adjust to life in Mexico.

Therefore, we find that when considered in the aggregate, the effect of the applicant's spouse inability to speak or write Spanish on her ability to live and work in Mexico, the emotional hardship that would result from the loss of her United States family and the negative impact that an unfamiliar environment would have on her mental health establishes that relocation would result in extreme hardship for the applicant's spouse.

The record establishes that the applicant is statutorily eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. However, the grant or denial of a waiver does not turn only on the issue of extreme hardship. It also hinges on the discretion of the Attorney General (now Secretary of Homeland Security) and pursuant to such terms, conditions and procedures as prescribed by regulation.

The favorable factors in this matter are the applicant's United States citizen spouse; the extreme hardship to his spouse if the waiver application is not approved; and the absence of a criminal record on the part of the applicant. The unfavorable factors in this matter are the applicant's unlawful presence in the United States for which he seeks a waiver, his prior period of unlawful residence and his unauthorized employment in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the mitigating factors in the present case 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 under section 212(a)(9)(B)(v), 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 met that burden. Accordingly, this appeal will be sustained and the application approved.

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