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



**U.S. Citizenship
and Immigration
Services**



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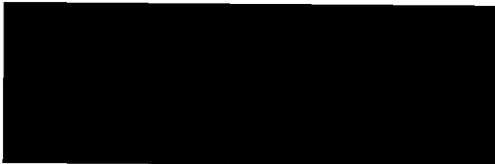
DATE: APR 11 2012 OFFICE: MEXICO CITY

FILE: 

IN RE: APPLICANT: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 black ink that reads "Perry Rhew".

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 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 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen spouse.

The District Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of District Director* dated December 11, 2009.

On appeal, counsel for the applicant asserts the applicant has shown his spouse would experience extreme hardship in the event of separation and in the event of relocation to Mexico. Counsel explains that given the current separation, the applicant's spouse suffers from psychological and financial hardship, and if she relocated to Mexico, she would continue to experience psychological difficulties, she would lose her jewelry business, and she would reside in a dangerous area in Mexico which would exacerbate her post-traumatic stress.

The record includes, but is not limited to, statements from the applicant's spouse, letters from family, friends, employers, and physicians, financial documents, a psychological evaluation, police records, educational documents, medical records, articles on psychological conditions, evidence on country conditions in Mexico, and other applications and petitions filed on behalf of the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(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 record reflects that the applicant entered the United States without inspection in January 1995 and returned to Mexico in September 2008. Inadmissibility is not contested on appeal. The AAO therefore finds that the applicant has accrued more than one year of unlawful presence and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen 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.

Counsel contends the applicant’s spouse experiences financial difficulties without the applicant present. The applicant’s spouse explains that her jewelry store business is failing without him, and her daughter from a previous relationship had to drop out of school to help her pay the bills. She indicates that vendors do not want to give her any credit because sales are slow and the economy is bad. Counsel adds that the applicant’s daughter cannot afford college tuition without her mother’s assistance, which she is unable to give without the applicant present, and that the applicant’s son has had to work two jobs to help support his family. Letters from the spouse’s children and evidence of tuition expenses are submitted in support. Furthermore, counsel asserts that the spouse is barely able to pay her monthly expenses, and the applicant is unable to assist her given his income in Mexico. Evidence of the spouse’s monthly expenses is submitted in support, as is a letter from the applicant’s employer in Chihuahua, Mexico.

Counsel also indicates that the applicant’s spouse suffers from severe psychological difficulties given criminal incidents related to her jewelry business and the applicant’s absence. The applicant and her son describe an incident in 2004 where four men came to her store with guns, held a gun

to the son's head, and threatened to kill him. The men shot at the son, took all the jewelry and money, and left. The applicant's spouse describes another incident in 2008 where someone broke into the jewelry store and tried to rob it. Police reports are submitted as corroborating evidence. Due to this criminal activity, the applicant's spouse contends that she lives with fear, and that her depression, which she had when she first met the applicant, has worsened. A doctor confirms that she suffers from depression, post-traumatic stress, and anxiety disorders, she is taking Zoloft and Ambien, and she is being seen by a psychotherapist. The psychotherapist opines that the spouse is anxious, nervous and terrified to be home alone or travel by herself, her responsiveness is numbed, and she suffers from generalized anxiety disorder and depression. The psychotherapist discusses the effect the robberies and the applicant's absence has on the spouse, stating that her depression, aggravated by high levels of anxiety about the future of the family, is contributing to her delicate mental and emotional condition.

Counsel asserts that if the applicant's spouse moved to Mexico to be with the applicant, she would lose the family business, and she would be unable to meet her financial obligations. The applicant's spouse indicates that her husband found employment taking care of cattle, but that it only pays 100 pesos a day, which is not enough to support himself, much less the family. A letter from the applicant's employer in Mexico is submitted. Furthermore, counsel indicates that living in Mexico given the country conditions, the family's financial situation, and the availability of appropriate psychological care would only exacerbate her psychological difficulties. Counsel adds that the majority of the spouse's extended family lives in the United States, and no one could help them financially in Mexico.

Despite submission of evidence on the spouse's household expenses, the record does not contain sufficient evidence of the spouse's income with respect to her jewelry and food businesses to support assertions of financial hardship on separation. The applicant further fails to provide any evidence regarding whether he would be able to contribute financially if he could join his spouse in the United States. Without details of the family's income and supporting evidence, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The applicant has submitted sufficient evidence of her psychological difficulties given her unique history and the applicant's absence. The record reflects that the applicant has been a victim of robbery at gunpoint, her and her son's life was threatened, and as a result of that experience and others she experiences post-traumatic stress. She and the psychotherapist indicated that without the applicant present, she feels unsafe at all times, and that her anxiety and depression have been exacerbated given the added stress of the applicant's immigration matters. This evidence of psychological hardship shows difficulties above and beyond those normally experienced.

As such, the AAO finds evidence of record demonstrating that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record includes sufficient evidence to establish the psychological, familial or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships

commonly experienced, the AAO concludes that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without his spouse.

Furthermore, there is sufficient evidence of hardship given the scenario of relocation to Mexico. The applicant's spouse has established that she suffers from post-traumatic stress disorder (PTSD) because she was a victim of robberies, and that she continues to live in fear. The record reflects that the applicant currently lives and works in Chihuahua, Mexico, earning approximately \$7 a day. Counsel contends that the country conditions would further exacerbate the spouse's PTSD and other psychological conditions. The AAO notes that the current U.S. Department of State travel warning with respect to Chihuahua, Mexico, indicates:

You should defer non-essential travel to the state of Chihuahua. The situation in the state of Chihuahua, specifically Ciudad Juarez, is of special concern. Ciudad Juarez has one of the highest murder rates in Mexico. The Mexican government reports that more than 3,100 people were killed in Ciudad Juarez in 2010 and 1,933 were killed in 2011. Three persons associated with the Consulate General were murdered in March 2010. The state of Chihuahua is normally entered through Columbus, NM, and the El Paso, Fabens and Fort Hancock, TX, ports-of-entry. There have been incidents of narcotics-related violence in the vicinity of the Copper Canyon in Chihuahua.

Travel Warning: Mexico, U.S. Department of State, February 8, 2012. This travel warning is viewed in light of the spouse's history as a victim of violent crime. Given this history and supporting evidence, the fact that the spouse would have to leave her Colorado businesses, and documentation of the applicant's current income in Mexico, the AAO finds there is sufficient evidence to establish the psychological, financial or other impacts of relocation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced. As such, the AAO concludes she would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico to live with the applicant.

Considered in the aggregate, the applicant has established that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 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.

The unfavorable factors include the applicant's entry without inspection and unlawful presence in the United States. The favorable factors include the extreme hardship to the applicant's spouse,

some documentation of hardship to the applicant himself, and evidence of good moral character as stated in letters from family and friends.

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