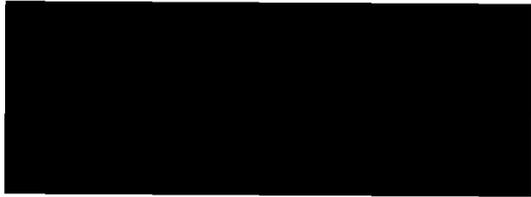


Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



H6

DATE: **APR 23 2012** Office: CIUDAD JUAREZ, MEXICO



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,

A handwritten signature in cursive script that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Ciudad Juarez, 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 her departure from the United States. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She 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 a decision dated October 13, 2009, the director concluded the applicant had failed to establish that her husband would experience extreme hardship if she were denied admission into the United States. The director also found the applicant failed to demonstrate that she merited a favorable exercise of discretion. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that her husband will experience extreme emotional, financial and physical hardship if she is denied admission into the United States. To support these assertions counsel submits financial, medical and psychological evaluation evidence, affidavits, articles about conditions in Mexico, and letters attesting to the applicant's good character. The record also contains documents written in Spanish.

8 C.F.R. § 103.2(b)(3) provides that:

Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Because the Spanish-language documents are not accompanied by certified English translations, they cannot be considered in the applicant's case. The entire remaining record was reviewed and considered in rendering a decision on the appeal

Section 212(a)(9)(B) of the Act provides in pertinent part:

- (i) 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.

Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure from the United States, remains in force until the alien has been absent from the United States for ten years. The record reflects the applicant was unlawfully present in the United States for over one year between April 2004 and August 2008, at which time she departed the country. She has remained outside of the United States for less than ten years. She is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility under this provision.

Section 212(a)(9)(B)(v) of the Act provides in pertinent part:

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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 BIA 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 BIA 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).

Though hardships may not be extreme when considered abstractly or individually, the BIA 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 is married to a U.S. citizen. Her spouse is a qualifying relative for section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility purposes.

The record contains references to hardship the applicant’s child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Accordingly, hardship to the child will be considered only to the extent that it causes the applicant’s spouse to experience hardship.

The applicant’s husband states in letters that he has lived separated from the applicant and their son since August 2008, they live in poverty in a small village in Mexico, the applicant does not work, and that he financially supports two households. The applicant’s husband also explains that he was laid off from his job in January 2009, he has unsuccessfully tried to find a new job, and he is using up his savings trying to support himself and his family. He indicates that after her arrival

in Mexico, the applicant required emergency treatment to have her gall bladder removed. In addition, he states that their son was born with an enlarged heart, is anorexic, and has chronic bronchitis which makes it difficult for him to breathe, and he has needed medical care numerous times since moving to Mexico. The applicant's husband is anxious and worried about the severity of his son's health conditions, and he states he is running out of money to pay for his son's medical care, Mexican health-care providers do not provide insurance for pre-existing conditions, and his family's health care was covered by his medical insurance in the U.S. The applicant's husband suffers from a recurrent iritis eye condition, which can cause visual impairment if not treated, and for which he does not believe he could get medical treatment in Mexico. The applicant's husband believes it would be difficult to find work and to support his family in Mexico because he has only a ninth-grade education and he is over 40 years-old. Moreover, he indicates that most of his family is in the U.S., and his elderly parents rely on his financial assistance. He states further that conditions in Mexico are not safe for him and his family, he is devastated by his family's physical and financial situation and his inability to help, he is unable to sleep or concentrate, and he has sought the assistance of a psychologist to help him.

Letters from family members attest to the emotional and physical hardship the applicant's husband is experiencing and to the applicant's good character. Financial evidence reflects the applicant's husband sends about \$400.00 a month to his wife in Mexico. The record contains evidence that the applicant's husband earned \$12.75 at his previous job, that he lost his job due to workforce reductions in January 2009, that he received \$3055.00 in severance pay, and that he receives about \$408.00 a week in unemployment benefits.

Medical evidence reflects their infant son was treated for coughing and congestion and diagnosed with bronchitis and cardiomegaly (enlarged heart) before leaving the United States, and since his arrival in Mexico, he has been treated for severe chronic bronchitis, difficulty breathing, hyperthermia and anorexia. Evidence that the applicant received medical attention in Mexico is also contained in the record, as is evidence that the applicant's husband has been diagnosed with recurrent iritis, and that he must be seen within hours when inflammation episodes occur or risk deterioration of his vision.

Two psychological evaluations diagnose the applicant's husband with severe depression and anxiety due to fears about his and his family's future, his inability to help his family and his financial situation. The evaluations indicate the applicant's husband's condition will worsen if his current circumstances continue, he requires monitoring for the possibility of suicide, he is on medication (Prozac and Trazodone), and his medication needs must be re-evaluated for possible higher dosage prescriptions.

In addition, current Department of State country-conditions reflect that non-essential travel to the state of Michoacan, where the applicant's wife and son now live, should be deferred and that attacks on government officials, law enforcement and military personnel, and other incidents of transnational criminal organization-related violence have occurred throughout the state. See http://travel.state.gov/travel/cis_pa_tw/tw/tw_5665.html.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's husband is experiencing financial and emotional hardship that rises above the common results of removal or inadmissibility, due to his separation from the applicant. The applicant's husband supports two households, recently lost his job, is on medication due to severe depression and anxiety, and is being monitored for the possibility of suicide due to his family's medical, financial and safety situation in Mexico. The cumulative evidence establishes the applicant's husband will experience extreme hardship if he remains in the U.S., separated from the applicant.

The evidence, considered in the aggregate, establishes the applicant's husband would also experience hardship beyond that normally experienced upon removal or inadmissibility if he relocates to Mexico to be with the applicant and their son. Most of the applicant's husband's family and friends are in the U.S., the applicant's husband is experiencing severe depression and anxiety based on financial and emotional stressors, and country-conditions evidence demonstrates that conditions where the applicant lives are unsafe. In addition, the applicant and their son suffer from serious medical conditions, and the family is not covered by health insurance in Mexico.

The AAO 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(a)(9)(B) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 s/he is excluded and/or 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 unfavorable factors in this matter are the applicant's entry without inspection and accrual of unlawful presence in the United States. The favorable factors are the hardship the applicant's husband and family would face if the applicant is denied admission into the United States, the applicant's good moral character, and the applicant's lack of a criminal record. The AAO finds that although the immigration violations committed by the applicant are serious in nature and cannot be condoned, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met her burden of proving eligibility for a waiver of her ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. The Form I-601 appeal will therefore be sustained.

ORDER: The appeal is sustained.