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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



[Redacted]

tlc

DATE **APR 23 2012** Office: CIUDAD JUAREZ, MEXICO FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:
[Redacted]

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico. The matter 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 ten years of his last departure from the United States. The applicant's father is a lawful permanent resident and he seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated October 20, 2009.

On appeal, prior counsel details the hardship that the applicant's father would experience if the applicant is not granted a waiver. *Appeal Letter*, dated December 17, 2009.

The record includes, but is not limited to, the applicant's father's statement, a psychosocial assessment, a letter from counsel, and a brief and letter from prior counsel. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in 1995, turned 18 years old on July 28, 2005, and departed the United States in March 2008. The applicant accrued unlawful presence from July 28, 2005, the date he turned 18 years old, until March 2008, the date he departed the United States. The applicant is 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 readmission within ten years of his March 2008 departure from the United States.

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.

....

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

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- (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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's father. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See 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*, 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.

Prior counsel states that the applicant is living alone in Chihuahua; the applicant’s father is concerned about the dangerous and poverty-stricken environment in Mexico; he and the applicant would be without work; he has not considered Mexico home for many years; and he may be a danger to himself. The counselor who evaluated the applicant’s father states that he has been in the United States since 1985 and the applicant’s spouse believes Mexico is dangerous and the living conditions are poor. The AAO notes the February 8, 2012 U.S. Department of State travel warning for Mexico which details various safety issues there and states:

Chihuahua: Juarez and Chihuahua are the major cities/travel destinations in Chihuahua -see map (PDF, 286 kb) to identify their exact locations: 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.

The applicant's father states that his spouse (the applicant's mother) passed away of a heart attack and the applicant lives in a dangerous place which is known for gang members, violence and drug traffic. The record includes the death certificate from the Civil Registrar in Chihuahua, Mexico for the applicant's mother, which reflects that she died on December 10, 2009 from heart failure, cardiac hypertension, artery hypertension and diabetes mellitus.

The record reflects that the applicant's father has resided in the United States for approximately 27 years. In addition, he would be relocating to a particularly dangerous area in Mexico. Based on these hardship factors, and the normal results of relocation, the AAO finds that the applicant's father would suffer extreme hardship upon relocating to Mexico.

Prior counsel states that the applicant's father is suffering severe depression due to separation from his wife and the applicant; he experiences terrible nightmares, hallucinations and extreme anxiety; his wife passed away from a sudden heart attack; and he stands to suffer more due to his wife's death and the applicant's prolonged absence. Prior counsel states that the applicant's father earns \$1,500 monthly; the applicant used to live with him and provide supplemental income; they have a close relationship; he is suffering from a suicidal depression that threatens to worsen with the loss of his wife; and he is a recovering alcoholic and may be compelled to drink again or commit suicide.

The counselor who evaluated the applicant's father states that he used to drink a lot but has been sober for 14 years; he has been prescribed medication for anxiety; the anxiety medication is not working; he feels as if he is going crazy; he has always had anxiety but the deportation of his wife and the applicant has set off a more serious form of anxiety involving the inability to stop mind-racing and hearing thoughts; he has thought of jumping in front of a train since his spouse left; he is taking anti-depressants but still cannot sleep and his mind races; he panics when alone; he has a supportive daughter; he has nightmares, hallucinations and severe anxiety when alone; the deportation of his family has triggered his high anxiety; he has frequent feelings of suicidal depression; and his diagnosis is anxiety disorder NOS.

The applicant's father states that his wife passed away from a heart attack in Chihuahua; he was not there with her; he is sad and torn apart; he feels alone without his wife and the applicant is living alone and unprotected; the applicant lives in a dangerous place which is known for gang members, violence and drug traffic; and he is worried something bad will happen to the applicant, who has lived in the United States since age 8. As noted, the record contains includes a death certificate showing that the applicant's mother died on December 10, 2009.

The record does not include supporting documentary evidence of the applicant's father's income or of the supplemental income, if any, that the applicant provided to him. However, the record reflects that the applicant's father is experiencing serious emotional issues and psychiatric issues. His concern for the applicant's safety is legitimate based on the country conditions. Considering the

hardship factors mentioned, and the normal results of separation, the AAO finds that the applicant's father would suffer extreme hardship if he remained in the United States.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

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).

Id. at 301.

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 are the applicant's entry without inspection and unlawful presence.

The favorable factors are the applicant's lawful permanent resident father and extreme hardship to the applicant's father.

The AAO finds that the immigration violations committed by the applicant are serious in nature; nevertheless, when taken together, we find 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)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act.


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Here, the applicant has now met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

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