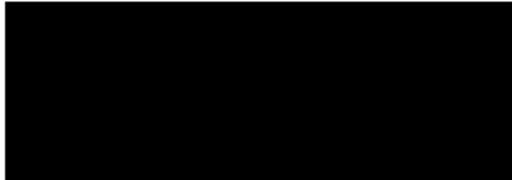


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

DATE **AUG 14 2012** Office: CHICAGO, ILLINOIS

FILE: 

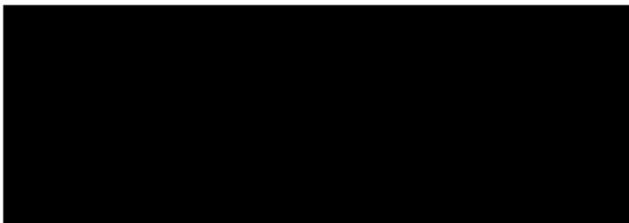
IN RE:

Applicant: 

APPLICATION:

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decisions of the district director and the AAO will be withdrawn and the application approved.

The applicant is a native and citizen of Mexico. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days but less than one year. The applicant does not contest the finding of inadmissibility. His spouse and father are lawful permanent residents and he has three U.S. citizen children. He 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).

The district director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated September 22, 2006. The AAO also found that the applicant had not established that failure to approve the waiver application would cause extreme hardship to a qualifying relative, and dismissed the appeal accordingly. *AAO Decision*, dated May 7, 2009.

On motion, counsel asserts that the applicant's qualifying relatives would experience extreme hardship if the waiver application is denied. *Form I-290B*, dated December 16, 2009.

The record includes, but is not limited to, counsel's brief, statements from the applicant and his spouse, statements from family and friends, financial records, letters verifying the applicant's employment, medical records, educational records and country conditions information. The entire record was reviewed and considered in rendering this decision.

The record reflects that the applicant entered the United States in or around January 1996 without inspection and remained until his departure in December 1997. Therefore, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed in December 1997, a period of more than 180 days but less than one year. The applicant re-entered the United States in January 1998 without inspection and has not departed. Therefore, he is inadmissible under section 212(a)(9)(B)(i)(I) of the Act for having been unlawfully present in the United States for a period of more than 180 days but less than one year and seeking readmission within three years of his last departure.

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

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year,

voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal . . . is inadmissible.

....

(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 or his children 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 spouse. 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.

Counsel states that the applicant’s spouse’s parents immigrated to the United States over 30 years ago when the applicant’s spouse was four months old; all of her immediate family resides in the United States; their middle son has asthma; their children would be uninsured and unable to receive adequate medical care; minimum wage in urban Mexico is \$5.15 per day and it would be difficult to support a family of five; country conditions are not safe for the applicant’s family; the applicant and his spouse are from the states of Michoacán; and living in Mexico permanently is not an option for the applicant’s spouse as she is restricted by the residency requirements to maintain lawful status in the United States. The applicant’s spouse makes claims similar to counsel.

The applicant states that his family would experience a greatly lowered standard of living in Mexico as his ability to earn a living would decrease. He also asserts that the family’s relocation to Mexico would rob his children of educational opportunities.

The record reflects that the applicant's children are 13, 11 and four years-old. The record includes a letter reflecting that the applicant's two older children are attending school in the United States. The applicant's middle child's and youngest child's medical records reflect that they have asthma. The record includes evidence that the applicant has a mortgage. The record includes copies of permanent resident cards for the applicant's spouse's father, mother, brother and two sisters, and a U.S. birth certificate for another brother. The record includes country conditions reports on Mexico.

The U.S. Department of State Travel Warning for Mexico, dated February 8, 2012, details numerous and serious security and safety issues in Mexico. It specifically states:

Michoacán...You should defer non-essential travel to the state of Michoacán except the cities of Morelia and Lázaro Cardenas where you should exercise caution...Attacks on Mexican government officials, law enforcement and military personnel, and other incidents of TCO-related violence, have occurred throughout Michoacán.

The record reflects that the applicant's spouse has resided in the United States nearly her whole life. Her immediate family members are in the United States in lawful permanent resident or U.S. citizen status. In addition, she has three U.S. citizen children who she would be raising in Mexico, two who have asthma. The AAO notes the potential loss of educational opportunities for the children. Furthermore, there are serious safety issues in the area to which she would be relocating. Her concern about the loss of her permanent resident status is also noted. Considering the hardship factors mentioned, and the normal results of relocation, the AAO finds that the applicant's spouse would suffer extreme hardship if she relocated to Mexico.

Counsel states that: the applicant is his spouse's only source of financial support; his spouse's family lives in California and she lives in Illinois; he has been married to his spouse for over eleven years; his spouse is the primary caretaker of their children; their middle son has asthma and requires constant care; the applicant's spouse depends on the applicant to provide health insurance coverage; the applicant has been employed with the same company for over 14 years; his spouse has been a homemaker for ten years and finding employment would be difficult as she does not have labor experience; it will be difficult for the applicant to find employment as he does not have family or friends in Mexico to guide him and he has spent over half of his life in the United States; his potential earnings in Mexico are significantly less than in the United States; and the applicant's spouse would be constantly worried about the applicant's safety in Mexico. The applicant's spouse makes similar claims and states that she is unable to work as she has young children who need her constant supervision. The record includes an employment letter for the applicant. The record reflects that the applicant and his spouse own a home and have a mortgage.

The record reflects that the applicant's spouse is the primary caretaker for her three children and she would be raising them without the financial support of the applicant. As mentioned, two of the applicant's children have asthma. In addition, she has valid concerns for the applicant's safety in Michoacán. Considering the hardship factors mentioned, and the normal results of separation, the

AAO finds that the applicant's spouse would suffer extreme hardship if she remained in the United States. As the applicant has established extreme hardship to his spouse, the AAO will not address hardship to his father.

In *Matter of Mendez-Morales*, 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, "balance 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 entries without inspection (including one in 1986), his unauthorized period of stay and his unauthorized employment.

The favorable factors are the applicant's U.S. citizen children and lawful permanent resident spouse, extreme hardship to the applicant's spouse, the lack of a criminal record and good moral character as evidenced in the letters of support.

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.

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.

Here, the applicant has met that burden. Accordingly, the previous decisions of the district director and the AAO will be withdrawn and the application will be approved.

ORDER: The previous decisions of the district director and the AAO are withdrawn and the application is approved.