

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

H6



DATE: DEC 05 2012 OFFICE: PHOENIX, AZ

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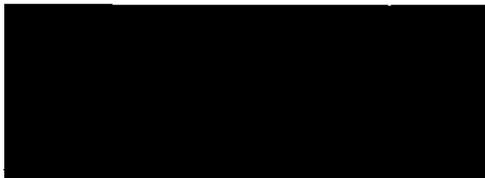
IN RE:

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 "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Phoenix, Arizona, 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 and child.

The Field Office Director concluded the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative given his inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated September 7, 2010.

On appeal, counsel contends the applicant's spouse would experience medical, psychological, and family-related difficulties without the applicant present due to her rheumatoid arthritis, hypothyroidism, PTSD, and depression. Counsel additionally asserts the spouse would experience extreme hardship upon relocation to Mexico because of her ties to the United States, her lack of ties in Mexico, adverse country conditions, and fear of her ex-husband who lives in Mexico.

The record includes, but is not limited to, statements from the applicant and his spouse, letters from family and friends, a psychological evaluation, medical and educational records, evidence of birth, marriage, divorce, residence, and citizenship, financial documents, and photographs. 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 applicant admitted in a sworn statement that he was admitted to the United States in March 2007 pursuant to a border crossing card. He remained past the date of his authorized stay, and returned to Mexico on September 15, 2009. The applicant was readmitted as a nonimmigrant to the United States on September 22, 2009. The AAO therefore finds that the applicant accrued unlawful presence from the end of his period of authorized stay in 2007 until September 2009 when he returned to Mexico. He is therefore 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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’s spouse states she has psychological conditions, and requires the applicant’s presence for assistance with those conditions. The spouse explains she was previously married to an emotionally and physically abusive man with whom she had a son. In a psychological evaluation, a psychologist relays that the spouse’s ex-husband has a long history of criminal activity and domestic abuse, adding that he threatened to take their son to Mexico and has also made threats on her life. A divorce decree indicates that the spouse has full custody of the son. The spouse contends she worries about the applicant’s life in Mexico due to death threats her ex-husband has made. The psychologist opines the spouse has post-traumatic stress disorder (PTSD) stemming from her experiences with her ex-husband, as well as severe depression, anxiety, and stress due to the applicant’s immigration situation. Letters from family and friends discuss the ex-husband’s abusive relationship with the spouse. The psychologist additionally mentions that the spouse’s mother has attempted suicide in the past, and has a history of chronic depression, which may impact the spouse’s own psychological well-being. The spouse asserts that she was also traumatized by the death of her father in 2009.

The applicant moreover contends that his spouse would experience financial and medical hardship without him. The spouse's physician states in a letter that she has been a patient since 2001, that the spouse has a medical history of juvenile rheumatoid arthritis (JRA) and hypothyroidism, and that both conditions are chronic and require constant monitoring. The physician further explains the spouse's JRA results in moderate joint pain, stiffness and swelling, and that the spouse is often limited in her physical abilities as the disease waxes and wanes. The spouse claims she takes five different pills a day and has biweekly injections to control the JRA, and that she is frequently monitored by her gynecologist due to some precancerous cells on her cervix. The applicant explains he earns \$19.25 an hour in the United States, and is able to help support his spouse, but that in Mexico he would only earn eight dollars a day.

The applicant's spouse asserts she would experience extreme emotional, medical, financial, and family-related hardship upon relocation to Mexico. She explains she was born in the United States, and has lived here her entire life except for one year when she tried to live in Mexico with her ex-husband. In a letter her physician recommends against living outside the United States for fear that monitoring of the spouse's symptoms and medication management will be suboptimal and perhaps result in a decline in her physical functioning and overall disease state. The spouse adds she has no family ties in Mexico, and that her mother, three brothers, and two sisters live in Arizona. The spouse claims she fears for her and her children's lives if they relocate to Mexico because of her ex-husband's threats. She moreover contends that her children would have difficulty adjusting to life in Mexico due to language difficulties. Counsel adds that the dangerous country conditions as well as the economy in Mexico add to the hardship the spouse would face upon relocation.

The record contains sufficient evidence of the spouse's emotional and psychological issues. The psychological evaluation and letters from family and friends confirm the spouse's assertions with respect to her abusive ex-husband. Furthermore, the spouse's contention that her ex-husband has threatened to take the child away is somewhat bolstered by the divorce decree, which specifically states that the ex-husband is not allowed to remove the child from Arizona or the United States without the mother's consent or a court order. Documentation of record reflects that the spouse's psychological state, which is influenced by her father's death in 2009, her experiences with her ex-husband, and her mother's own psychological issues, contributes to emotional difficulties she would experience without the applicant present. Furthermore, the applicant has submitted documentation demonstrating that her medical conditions have physical consequences which require the applicant's assistance.

The AAO therefore finds there is sufficient evidence of record to demonstrate 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 establishes that the medical, psychological, 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 returns to Mexico without his spouse.

Furthermore, the applicant has demonstrated she would experience extreme hardship upon relocation to Mexico. There is no assertion or evidence to show that the spouse's ex-husband resides in the area of Mexico the applicant and his spouse would reside if they relocated, or that the spouse would be able to carry out any threats made. However, the AAO notes that the applicant's spouse was born in the United States and has resided here for almost her entire life. Letters from family and friends establish her ties to the United States, and a letter from her physician of over 10 years indicates her medical condition would be best served if she was monitored in the United States with medical care providers who are already familiar with her history. Moreover, although there is no evidence demonstrating that either the applicant or his spouse would be unable to obtain adequate employment in the area of Mexico they would live in, there is some documentation showing that the spouse has been able to meet financial obligations in the United States with the applicant's assistance.

In light of the evidence of record, the AAO finds the applicant has established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

Considered in the aggregate, the applicant has established that his 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 unlawful presence in the United States. The favorable factors include the extreme hardship to the applicant's spouse, lack of a criminal history, and evidence of good moral character as found in letters from friends and family.

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 her burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.