

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



tlc

DATE: **DEC 14 2012** OFFICE: MEXICO CITY (ANAHEIM)



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 black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Acting Field Office 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 ten 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 order to reside in the United States with her husband.

In a decision dated August 15, 2011, 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 waiver application was denied accordingly.

The applicant asserts on appeal that additional evidence shows her husband is experiencing extreme emotional, financial and physical hardship because she has been denied admission into the United States. To support these assertions the applicant submits letters from her husband and family members, medical evidence, photographs and citizenship and identification information for family members.

The record also contains Spanish-language documentation. 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)(i) of the Act provides in pertinent part that any alien 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. In the present matter, the record reflects the applicant was unlawfully present in the United States for over a year between May 21, 1998 and November 2010, 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. The applicant does not contest her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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

Waiver.-The Attorney General [now Secretary, Department 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.

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-Morales*, 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 (Board) 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 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).

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, 1293 (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 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 adult children 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 children 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 moved to the United States when he was 18; he has lived in this country for over 36 years; he owns a home; and he is close to his brothers and their families, who live near him. He married the applicant in 2006 at the age of 48; this is his first marriage; and the applicant is his emotional support, his “motivation and inspiration,” and “the love of his life.” The applicant’s husband indicates that he is self-employed, is the sole financial provider in their family, has “no place to go in Mexico”, and would be unable to financially support their family and meet his financial obligations in the United States if he moved to Mexico. He is also unable to visit the applicant often in Mexico, due to his financial obligations in the

United States and his financial support of the applicant. Upon her return to Mexico, the applicant lived with his mother in [REDACTED]. However, evidence in the record establishes that his mother recently passed away; the applicant subsequently has moved to Michoacán. He worries about the applicant's safety, because she is alone in an "extremely dangerous" city. He also worries that Michoacán would be an unsafe place for him to live. Additionally, he was an alcoholic prior to meeting the applicant, and she motivated him to attend Alcoholics Anonymous (AA) meetings and to incorporate healthy changes into his life. Since her departure to Mexico, he suffers stress and takes medication for depression; he has lost his appetite and cannot sleep; and he has started attending AA meetings again to help him manage his life and loneliness.

Medical documentation confirms that a doctor has seen the applicant's husband for symptoms including inability to sleep, loss of appetite, headaches, and depression; the doctor prescribed antidepressant medication. The record also contains evidence confirming the applicant's husband's active AA membership. Letters from family members attest to the emotional hardship the applicant's husband is experiencing and to the applicant's good character.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's husband would experience hardship that rises above the common results of removal or inadmissibility, if he remains in the United States, separated from the applicant. A Department of State country-conditions report confirms the applicant's husband's concerns regarding the unsafe and violent conditions his wife faces in Michoacán, Mexico *See* [http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_5815.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html). Evidence also establishes the applicant's husband has a history of alcoholism and that he is suffering from physical and emotional symptoms requiring treatment due to his separation from the applicant and his concerns regarding her safety situation in Mexico. The cumulative evidence establishes the applicant's husband will experience extreme hardship if he remains in the United States, 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. The applicant's husband has lived in the United States for most of his life, over 36 years, and his family ties to the United States are strong. In addition, his safety concerns in Mexico are confirmed by a country-conditions report reflecting that non-essential travel to most parts of the state of Michoacán should be deferred and that incidents of transnational criminal organization-related violence have occurred throughout the state. *See* [http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_5815.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html).

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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The unfavorable factors in this matter are the applicant's unlawful entry and her accrual of unlawful presence in the United States between May 1998 and November 2010. 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.