

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



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

H6

DATE: DEC 20 2012 Office: SAN DIEGO, CA FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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:  
[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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by Field Office Director, San Diego, California 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)(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 last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident spouse and two U.S. citizen children.

In a decision, dated September 12, 2011, the field office director found that the applicant had failed to establish extreme hardship to her lawful permanent spouse as a result of her inadmissibility and denied the application accordingly.

On appeal, counsel states that the applicant's spouse is suffering extreme emotional hardship as a result of separation and would suffer extreme financial, physical, and emotional hardship as a result of relocation.

Section 212(a)(9) of the Act provides:

**(B) ALIENS UNLAWFULLY PRESENT.-**

(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 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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 record reflects that the applicant entered the United States without inspection in March 2005. The applicant did not depart the United States until December 2010. The applicant was unlawfully present in the United States from March 2005 until the date she departed the United States in December 2010. The applicant is therefore inadmissible under section 212(a)(9)(B)(i) of the Act for having been unlawfully present in the United States for more than one year. The applicant's qualifying relative is her lawful permanent resident 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-I-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 record contains references to hardship the applicant’s 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. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(v) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

The record of hardship includes: an affidavit from the applicant’s spouse; 2 psychological evaluations; medical documentation; hardship letters from family members, friends, and coworkers; and documentation regarding the country conditions in Mexico.

The applicant’s spouse is claiming extreme emotional hardship as a result of separation from his wife and extreme emotional, physical, and financial hardship as a result of relocation. The record establishes that the applicant’s spouse and youngest child are living in Irapuato, Guanajuato, Mexico and that his oldest child is living with him and his 16 year old brother in the United States. The applicant’s children are 3 years old and 7 years old.

In regards to separation, the applicant’s spouse claims that he is suffering emotionally without the applicant and his youngest child in the United States. The record indicates that the applicant’s

spouse has been diagnosed with Major Depression by two mental health professionals, he states that his depression and stress is so great that his employment is at risk, and that he is very concerned for his wife and child's safety in Mexico given the level of violence in the area where they live and the health problems of his son.

We find that the record establishes that the applicant's spouse is suffering extreme emotional hardship as a result of separation. The record indicates through two psychological assessments and numerous letters from family, friends, and coworkers that the applicant's spouse is suffering beyond what would normally be expected upon the separation of family members. Numerous statements in the record indicate that the applicant's spouse is not able to concentrate at work, has feelings of anxiety and panic, is depressed, has difficulty sleeping, and has lost weight. The applicant's employer states that the applicant's spouse's behavior at work has drastically changed and that as a welder it is essential for him to be able to focus and concentrate. His employer states that the applicant's spouse is currently at risk of losing his employment because of his inability to focus. The record indicates that this employment is the applicant's main source of income and health insurance for his family and that losing this employment would greatly exacerbate his family's hardship. In addition, the record indicates that the applicant's child suffers from asthma and that there have been incidents of violence in the area of Mexico where the applicant is living. The record establishes through medical documentation that the applicant's son was born premature and suffers from asthma, which is exacerbated by living in an area with a large flow of wind and dust. We note that the current U.S. State Department Warning for Mexico states that there is no advisory in effect for Guanajuato. However, the record indicates, through affidavits and news articles, that there is violence occurring in the city where the applicant's spouse and child are residing. Thus, the AAO finds that the applicant's spouse is suffering emotional hardship as a result of being separated from the applicant.

In regards to relocation, the applicant's spouse states that he will suffer extreme emotional, financial, and physical hardship as a result of relocation. The applicant states that if he relocated to Mexico he would have to leave his employment, which helps support not only his wife and children, but also his parents and younger brother. He states further that his family would lose their health insurance and access to healthcare in the United States if he were to lose his job. Finally, the applicant's spouse states that he fears for his safety if he were to return to Mexico because of the violence in the area where his wife and child are residing. He states that he fears, because of his perceived wealth from working in the United States, that he would be kidnapped or worse. We note that the record is inconsistent as to where the applicant's spouse's parents are residing as medical documentation in the record indicates that the applicant's spouse's mother's doctors are located in Guanajuato. Thus, the applicant's spouse's assertions regarding relocation causing separation from his parents will not be given much weight. The record also indicates that two of the applicant's siblings, the applicant's mother, and two of the applicant's spouse's siblings are living in Irapuato, Guanajuato. However, many family members and friends have submitted affidavits attesting to the increased violence in Irapuato, stating that they fear for the applicant's spouse if he were to relocate given that he will be perceived as wealthy, that they have suffered assaults in their home or business, that there have been murders, and children have been kidnapped while being dismissed from school. Moreover, the record indicates that the applicant's

spouse is not likely to find employment in Mexico to support his wife and children. The record indicates that the applicant's spouse is a welder and a landscaper. Country reports indicate that workers in a major city in Mexico would earn approximately \$4.65 per day in minimum wages and that the average worker earns between 1 and 5 times the minimum wage per day. The record includes a report from Mexico's National Commission for Minimum Wages, which states that a welder would make approximately 79 Mexican pesos per day or \$6.20 per day. The AAO notes that the applicant's spouse is currently making \$17.75 per hour as a welder in the United States, not including his work as a landscaper. The record also indicates that the applicant's spouse owns a plot of land in the United States that has an outstanding loan. Thus, taking into account the financial hardships; the loss of health insurance; and the potential safety factors in Mexico, we find that the applicant has also established that her spouse would suffer extreme hardship upon relocation.

Considered in the aggregate, the applicant has established that her 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-Morales*, 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 favorable factors include the hardship to the applicant's spouse and children if she were not granted a waiver of inadmissibility; the lack of any criminal record; and, as attested to in numerous affidavits in the record, the applicant's attributes as a loving mother and wife. The unfavorable factors include the applicant entry into the United States without inspection and her unlawful residence in the United States for over five years.

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.