

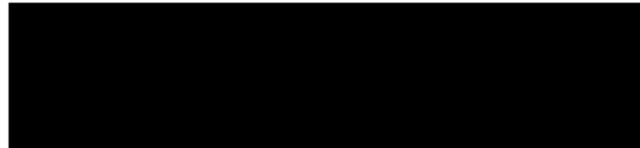


U.S. Citizenship  
and Immigration  
Services



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Date: DEC 28 2012 Office: MONTERREY, MEXICO



IN RE:



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).

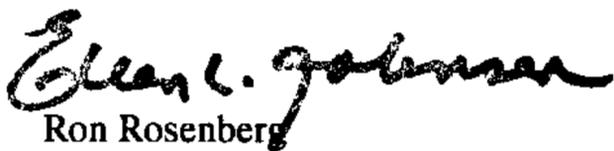
ON BEHALF OF APPLICANT:



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,



Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Monterrey, 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 her last departure from the United States. The applicant is the spouse of a U.S. citizen, has a U.S. citizen child, and seeks a waiver of inadmissibility to reside in the United States.

In a decision, dated December 28, 2010, the field office director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility and that she did not warrant the favorable exercise of discretion. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated January 21, 2011, counsel states that the field office director denied the applicant's waiver in error, that her qualifying relative is suffering extreme hardship beyond that of family separation, and that the field office director abused his discretion. Counsel submits additional evidence of hardship on appeal.

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.

...

**(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).

...

(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 in September 1998 without inspection and did not depart the United States until February 2010. Thus, the applicant, born on December 3, 1981, accrued unlawful presence from December 3, 1999, the date she turned 18 years old to February 2010, when she departed the United States. The applicant is therefore inadmissible under section 212(a)(9)(B)(i) of the Act for having been unlawfully present in the United States. The applicant's qualifying relative is her 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 record contains references to hardship the applicant’s child 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 child will not be separately considered, except as it may affect the applicant’s spouse.

The record of hardship includes: hardship statements, medical records, financial documents, a letter from the applicant’s son’s teacher, and country conditions reports.

The applicant’s spouse claims that he is suffering extreme emotional and financial hardship as a result of separation. He states that he is suffering anxiety, depression, and insomnia as a result of his wife residing in Ciudad Juarez, where she could be a victim of violence. The applicant’s spouse states that while visiting the applicant in Mexico he was a victim of theft and witnessed a person being shot in a drive by shooting. The record indicates that the applicant was born in

Ciudad Juarez and has relocated there following her departure from the United States. In support of his assertions regarding emotional hardship the applicant's spouse submits medical documentation which indicates that in 2010 and 2011 he was being treated for severe anxiety, chronic insomnia, and depression. The record includes prescriptions for anti-anxiety medication from 2010 and a letter, dated January 13, 2010, from a licensed professional counselor, which states that the applicant's spouse has requested therapy due to his depression and anxiety and that his first therapy session was on January 13, 2010. Furthermore, the applicant's spouse's assertions regarding his emotional hardship are also supported by a statement from the his sister, two statements from family friends, and a letter from his employer. In a letter, dated January 7, 2011, the applicant's spouse's employer states that the applicant's spouse's personal life is impacting his job performance, with his productivity and accuracy suffering and that if these issues continue they could affect his ability to maintain his employment.

The applicant's spouse also claims that he is suffering extreme financial hardship as a result of separation because he is the only wage earner for himself, his son, and his wife in Mexico. The record indicates that the applicant works two jobs and makes approximately \$30,000 per year. He asserts that his wife is too frightened to go out in Mexico to find employment and that he does not believe she would find employment if she did try. He also states that his student loans and cost of traveling to Mexico have taken a significant toll on his finances. We note that the applicant's spouse's credit report and bank statements indicate that he has a mortgage, other loans, and credit card debts amounting to approximately \$109,000, that his monthly payment on these loans is approximately \$1,500 per month, and that his biweekly income is approximately \$850. Thus, we find that taking the emotional and financial suffering of the applicant's spouse together he has shown that he is suffering extreme hardship as a result of separation.

We also find that the applicant has established that he would suffer extreme hardship as a result of relocating to Mexico. The record shows that the applicant's spouse has significant professional, financial, familial, and community ties to the United States. The record indicates that the applicant's spouse has been working at his current employer as a Benefits Specialist since June 2007 and that he has health insurance through this employer. The record also indicates that the applicant's spouse is attending college to further his degree, is a member of a professional association for medical assistants, belongs to his local Catholic church, and a community group. The applicant's spouse owns a home in the United States, his siblings live in the United States, his parents live in the United States, and he has a U.S. citizen son who lives in the United States. In addition to the applicant's spouse's significant ties to the United States he asserts that he fears for his safety if he were to relocate to Ciudad Juarez. The record includes numerous news articles and country reports indicating the prevalence of violent crime in Ciudad Juarez. The current U.S. State Department Travel Warning for Mexico states that the situation in the state of Chihuahua, specifically Ciudad Juarez and Chihuahua City, is of special concern and that although there has been a decline in homicides in 2012, Ciudad Juarez still has one of the highest homicide rates in Mexico. Finally, the warning states that in these areas, U.S. citizens have been victims of narcotics-related violence. Therefore, given the applicant's spouse's strong ties to the United States, his lack of any current ties to Mexico, and the country conditions in

Ciudad Juarez, where the applicant was born and is residing, we find that the applicant's 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 in the applicant's case include the extreme hardship to the applicant's spouse and child if the applicant were not granted a waiver, the applicant's expression of remorse over her immigration violations, the lack of a criminal record, and as evidenced by numerous statements in the record, the applicant's attributes as a loving mother and wife. The unfavorable factors in the applicant's case include the applicant's entry into the United States without inspection and her unlawful presence in the United States.

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.