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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: FEB 03 2012 OFFICE: CIUDAD JUAREZ, MEXICO FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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: SELF-REPRESENTED

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 cursive script, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The record reflects that 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 record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 23, 2009.

On appeal, the applicant's spouse asserts that extreme hardship has resulted from denial of the waiver application. *See Notice of Appeal or Motion (Form I-290)*.

The record includes, but is not limited to, statements from the applicant's spouse describing the hardship claimed; a psychological report pertaining to the applicant's spouse; an Extreme Medical Hardship Certificate pertaining to the applicant's spouse; medical documentation pertaining to the applicant's spouse; support statements from friends of the applicant; a statement from the applicant's spouse's employer; money transfer receipts, bills and a payment receipt; a February 20, 2009 travel alert for Mexico and newspaper articles on conditions in Mexico.<sup>1</sup> The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) 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

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<sup>1</sup> One the applicant's spouse's statements, as well as five medical documents and six articles on conditions in Mexico submitted in support of the Form I-601 are written in Spanish and are not accompanied by an English-language translation. Accordingly, they will not be considered in this proceeding. 8 C.F.R. § 103.2(b)(3).

admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record indicates that the applicant stated during her immigrant visa interview that she had entered the United States in June 2004, without inspection, and remained until February 2008 when she departed the United States for Mexico. Therefore, the applicant accrued unlawful presence from June 2004 when she entered without inspection, until February 2008, when she departed the United States. As the applicant is seeking admission to the United States within ten years of her February 2008 departure, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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 waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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.

The applicant's spouse asserts that he is experiencing emotional hardship without the applicant. He states that he loves his wife and cannot be without her as she is the cornerstone of his home. He also states that he has been happily married but is worried that his marriage will not survive separation. The applicant's spouse also states that his spouse had to take their son to Mexico because he cannot work full-time and care for his son. He also states that he has been stressed since the applicant and his son left for Mexico because they do not have a home there and he does not know how to resolve the problem. He states that he has lost his appetite; that he worries about the safety of his spouse and

son because of crime in Mexico; that he cannot sleep and takes sleep medication; and that he has had to visit his doctor several times because of ever worsening depression and anxiety.

The applicant's spouse also states that his standard of living is being negatively affected as he is renting an apartment for his family in Mexico and supporting them. He asserts that he cannot afford to support his wife and child in Mexico and support himself in the United States where the standard of living is high.

The record includes a January 21, 2008 psychological evaluation of the applicant's spouse prepared by marriage and family therapist [REDACTED]. [REDACTED] indicates that the applicant's spouse reported that since he became aware that his spouse could not remain in the United States he has experienced a depressed mood, anger, irritability, and decreased appetite with weight loss; that he often feels like crying when he thinks of their separation; that he has withdrawn socially; and lacks interest and motivation, as well as energy. [REDACTED] further indicates that the applicant's spouse wakes up at night because of fear about the applicant's situation. She finds that based on criteria established by the American Psychiatric Association in the Diagnostic Manual for Mental Disorders (DSM-IV) the applicant's spouse is suffering from Major Depressive Disorder, Single Episode, 296.2. [REDACTED] recommends that the applicant's spouse have a medication evaluation to determine whether antidepressants would decrease his symptoms and psychological treatment to develop better coping skills to deal with his stressors.

The record also includes a February 9, 2008 Extreme Medical Hardship Certificate from [REDACTED] who states that the applicant's spouse suffers from Adjustment Disorder with Depressed Mood DSM IV TR 309.0, anxiety, depression, insomnia, anhedonia, isolation, loss of energy, and loss of interest. [REDACTED] recommends medication for the applicant's spouse's anxiety and depression, counseling, exercise, and proper nutrition; laboratory investigation to rule out systemic illnesses; and psychiatric consultation.

The record also includes an August 15, 2009 medical evaluation and a prescription from [REDACTED] indicating that the applicant's spouse is being treated for vertigo, insomnia, obesity, and depression and anxiety; and that he has been prescribed Desyrel and Alprazolam for anxiety. Also included in the record is an August 3, 2009 Visit and Patient Information record from Nurse [REDACTED] of Kaiser Permanente, written partly in English and partly in Spanish, which indicates that the applicant's spouse had been diagnosed with vertigo, and has been prescribed Meclizine.

The record further contains a March 22, 2008 note from [REDACTED] of [REDACTED] indicates that the applicant's spouse suffers from Major Depression due to his family's situation and has been prescribed Paxil for depression.

A March 26, 2008 letter from the City of Santa Ana, the applicant's spouse's employer, states that since his spouse and child left for Mexico, he has been depressed and unable to focus on his work.

While the letter states that the applicant's spouse is a hard worker, it also states that he may lose his job providing transportation to older adults due to his depression.

While the AAO does not find the record to establish that the applicant's spouse is experiencing financial hardship in the applicant's absence, we do take note of the impacts that separation has had on his emotional/mental health. When these impacts, including that on his ability to perform his job responsibilities, are considered with the normal hardships created by separation, the record establishes extreme hardship.

With respect to relocation, the applicant's spouse states that it would be devastating for him and his family if he joins the applicant in Mexico. He contends that he is 100 percent integrated into the American culture, having lived in the United States for many years. He also states that because of the poor economy in Mexico there are no jobs and salaries are very low. As a result, he contends, he would not be able to support his family. The applicant's spouse further contends that he has become accustomed to life in the United States and that moving to Mexico would negatively affect his family's standard of living. He also states that he is concerned about the political and criminal climate in Mexico.

The record includes a U.S. Department of State, Bureau of Consular Affairs, Washington, DC, *Travel Alert*, February 20, 2009, warning of crime and dangers in Mexico, and July 13, 2009 and July 17, 2009 LA Times articles reporting drug-related gang violence in Mexico.

The record indicates that the applicant's spouse would relocate to Ciudad, State of Guerrero, Mexico. The AAO bases this conclusion on the Biographic Information (Form G-325A) for the applicant, which indicates she was born in [REDACTED] and that her parents continue to reside there. In that the applicant's spouse has no family ties in Mexico, the AAO finds it likely that he and the applicant would reside in or near the city that was once the applicant's home and where she has family. We further observe that conditions in Mexico have led the U.S. Department of State, Bureau of Consular Affairs, to warn of dangers in Mexico. The travel warning states, in part, that:

Guerrero and Morelos: You should exercise extreme caution when traveling in the northwestern part of the state of Guerrero, which has a strong TCO presence. Do not take the dangerous, isolated road through Ciudad Altamirano to the beach resorts of Ixtapa and Zihuatanejo and exercise caution traveling on the coastal road between Acapulco and Ixtapa due to the risk of roadblocks and carjackings.

Downtown Acapulco and surrounding areas have seen a significant increase in narcotics-related violence in the last year. Incidents have included daylight gunfights and murders of law enforcement personnel and some have resulted in the deaths of innocent bystanders...

See U.S. Department of State, Bureau of Consular Affairs, Washington, DC, *Travel Warning*, April 22, 2011.

When the AAO considers the potential risk to the applicant's spouse's safety if he relocates to Mexico and his long-term residence in the United States, together with the hardships commonly resulting from relocation to another country, the applicant has established that the applicant's spouse would suffer extreme hardship were he to join her in Mexico due to her inadmissibility.

As the applicant has established extreme hardship to her spouse as a result of her inadmissibility, she is statutorily eligible for a waiver under section 212(i) of the Act. Accordingly, the AAO now turns to a consideration of the applicant's eligibility for a favorable exercise of discretion.

In discretionary matters, the applicant 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(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).

See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 favorable factors in this matter are the applicant's U.S. citizen spouse and the child; the extreme hardship her spouse would suffer if the waiver application is denied; and the statements from her friends attesting to her character. The unfavorable factors in this matter are the applicant's unlawful entry to and residence in the United States.

While the AAO does not condone the applicant's actions, we find that the mitigating factors in the applicant's case outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's 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 establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, the appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained. The waiver application is approved.