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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 06 2012

Office: CIUDAD JUAREZ, MEXICO

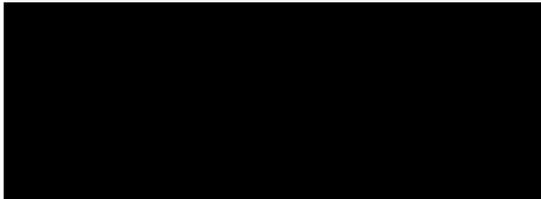
FILE

IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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,

Perry Rhew
Chief, Administrative Appeals Office

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

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 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. The applicant is married to a U.S. citizen and 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 with his wife in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and that the application should be denied as a matter of discretion. The field office director denied the application accordingly. *Decision of the Field Office Director*, dated August 3, 2009.

On appeal, counsel contends the applicant established extreme hardship, particularly considering the applicant's wife is under constant medical care, she has been legally declared the sole caretaker of her disabled aunt, and country conditions in Mexico. The applicant submits additional evidence of hardship.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on October 24, 2005; a letter from the applicant; statements from letters from the applicant's employer; letters from employer; letters from physicians; a letter from social worker; an affidavit from a psychologist; documentation addressing aunt's mental health issues; letters of support; copies of bank account statements and pay stubs; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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.

....

(v) Waiver. – The Attorney General [now the Secretary 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 Attorney General [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.

In this case, the record shows, and the applicant concedes, that he entered the United States in May 2002 without inspection and remained until February 2008. *Letter from* [REDACTED] undated; *Notice of Appeal or Motion (Form I-290B)*, dated September 3, 2009. The applicant accrued unlawful presence of over five years. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of his last departure.

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.

In this case, the applicant’s wife [REDACTED] states that she was previously married to a drug user and suffered severe verbal abuse, causing her to suffer from a variety of emotional disorders including chronic anxiety, depression, and panic attacks. She contends she had been taking daily medication, but that since she married her current husband, she was able to stop taking the medication. She states that her husband is her soul mate, and that he helps her physically and mentally. According to [REDACTED] she tried living with her husband in Mexico in March of 2008. She states that they lived with his parents and that life in Mexico was extremely hard. She states the move completely changed her lifestyle and she was unable to find a job. She states she felt hopeless and helpless and was anxious all the time. According to [REDACTED] she witnessed a shooting right outside of the house when she was walking on the sidewalk. She contends three young men were killed and she will forever remember the vision of their dead bodies. She states she could not adjust to living in Mexico and so she left her husband and came back to the United States alone. [REDACTED] states that her psychological conditions have worsened as a result of being separated from her husband and she is now experiencing extreme anxiety and insomnia. Furthermore, [REDACTED] states that she was born in the United States, has lived in the United States her entire life, and does not speak Spanish fluently. Moreover, [REDACTED] states that she cannot go back to living in Mexico because she is the only person who cares for her mentally disabled aunt. According to [REDACTED] her aunt would “fall apart” if she relocated to Mexico permanently. [REDACTED] states that her aunt would have to move with her to Mexico and that her aunt would lose the government disability checks that she currently receives. In addition, [REDACTED]

states she has worked for the State of Arizona for fifteen years and that if she relocated, she would lose her job as well as her health insurance. *Affidavit of* undated; *Letter from* dated March 28, 2008; *Declaration of* dated January 28, 2008.

After a careful review of the record, the AAO finds that the applicant's wife will suffer extreme hardship if the applicant's waiver application were denied. The record contains substantial documentation corroborating claim that she has a history of depression and anxiety. According to her physician, has seen the same physician since October of 2004 for asthma, depression, and anxiety. The physician states that anxiety and depression have escalated since her husband's departure from the United States and that she has been placed back on medications. In addition, the physician states that's asthma is under control when she is in Phoenix, but when she travels to a higher elevation, "her lungs cannot handle it" and she requires more frequent doses of her inhalers. According to the physician, the longer she is at the higher elevation, the worse her asthma gets and the asthma medications cause an increase in heart rate and anxiety. *Letters from* dated August 19, 2009, and January 22, 2008. In addition, an affidavit from a psychologist in the record diagnoses with Major Depressive Disorder, Panic Disorder, and Post-Traumatic Stress Disorder, and concludes that "[h]er level [of] current impairment may require hospitalization." *Affidavit of* dated August 22, 2009 (stating that prescription of Lexapro for her depression, anxiety, and panic attacks was increased). Another letter in the record, from therapist, states that depressive symptoms are causing her to be unable to function normally at work and home. *Letter from* dated March 26, 2008. Considering history of mental health issues and the documentation in the record showing that separation from her husband has caused a further deterioration in her mental state, the AAO finds that if decides to stay in the United States without her husband, the effect of separation from the applicant goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Furthermore, relocating to Mexico to avoid separation would be an extreme hardship for Ms. As stated above, the record shows that has a history of mental health issues for which she is receiving treatment. Relocating to Mexico would disrupt the continuity of her health care. In addition, the AAO acknowledges that has already attempted to live in Mexico and that she was unable to adjust. According to she witnessed a shooting where three young men were killed. The AAO recognizes that the applicant and his parents are from Michoacan, Mexico, a state the U.S. Department of State urges U.S. citizens to defer non-essential travel due to ongoing violence and persistent security concerns. *U.S. Department of State, Travel Warning, Mexico*, dated (describing Michoacan as home to one of Mexico's most dangerous transnational criminal organizations). Moreover, regarding asthma, the AAO takes administrative notice that Phoenix, Arizona, is approximately 1,000 feet above sea level whereas Michoacan, Mexico, is approximately 5,000 feet above sea level. According to her physician, asthma would worsen at the higher elevation. *Letter from* dated August 19, 2009. Additionally, the record substantiates's contention that she takes care of her mentally disabled aunt. The record contains a General Power of Attorney, showing that has full power and authority to act on her aunt's behalf and the record contains ample documentation showing

that [REDACTED] aunt is mentally disabled, cannot read or write, has incomprehensible speech, has the mentality of an 8-10 year old child, and receives Social Security disability payments. *Letter from* [REDACTED] dated March 20, 2008 (letter from [REDACTED] aunt's vocational manager stating that [REDACTED] cannot be gone for more than a day or two before her aunt shuts down, becoming angry and verbally abusive to others); *Letter from* [REDACTED] dated March 24, 2008 (letter from [REDACTED] aunt's caretaker stating that the aunt "can only find comfort and safety when [REDACTED] is with her"); *Letter from* [REDACTED] dated March 18, 2008 (letter from the Arizona Division of Developmental Disabilities stating that [REDACTED] lives with her aunt and that she helps her aunt in all aspects of daily living); *Neuropsychological Evaluation*, dated March 6, 2002. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if she relocated to Mexico to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case are the applicant's entry without inspection and periods of unauthorized employment and unlawful presence in the United States. The favorable and mitigating factors in the present case include: family ties in the United States including his U.S. citizen wife; the extreme hardship to the applicant's wife and her aunt if he were refused admission; letters of support describing the applicant as an excellent person who is well mannered, highly responsible, genuine, kind, and financially dependable; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.