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



**U.S. Citizenship  
and Immigration  
Services**



H6

DATE: **FEB 15 2012** OFFICE: MEXICO CITY (CIUDAD JUAREZ) FILE:

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:

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,

for

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who entered the United States without admission or parole in April 2002 and departed in September 2007. The applicant 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 his last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The Acting District Director concluded that the record failed to establish the existence of extreme hardship for the applicant's spouse and denied the application accordingly. *See Decision of the Acting District Director*, dated June 4, 2008.

On appeal, the applicant's spouse asserts that he is suffering extreme hardship due to the departure of his wife. According to the applicant's spouse, he cannot relocate to Mexico because he owns a house in the United States and his brothers, sisters, and two daughters live in the United States. He further claims that he would not be able to find work or feel safe in Mexico. The applicant's spouse states that since the applicant's departure, he has lost weight and does not sleep well, affecting his concentration at work.

In support of the waiver application and appeal, the applicant submitted medical documents, affidavits from the applicant's spouse, letters in support, school records, financial documents, and documents written in Spanish, with no accompanying translation<sup>1</sup>. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(B) ALIENS UNLAWFULLY PRESENT.-

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

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<sup>1</sup> According to 8 C.F.R. § 103.2(b)(3), "[a]ny 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."

(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 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.

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 qualifying relative in this case is his U.S. citizen spouse. 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)(B)(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.

In the present case, the record reflects that the applicant is a twenty-five year-old native and citizen of Mexico who resided in the United States from April 2002, after entering without admission or parole, to September 2007, when she returned to Mexico. The applicant’s husband is a fifty-two year-old native of Mexico and citizen of the United States. The applicant is currently residing in Mexico and the applicant’s spouse is residing in Santa Ana, California.

The applicant’s spouse claims that he has been suffering extreme hardship since the applicant’s departure, as he has lost weight and does not sleep well. See *Form I-290B*, dated June 25, 2008. He also states that he has developed stress, heartburn, and depression since that date. See *Declaration of* [REDACTED]. The applicant’s spouse submitted documents from different medical providers to support his claims. The applicant’s spouse visited the [REDACTED] [REDACTED] on August 19, 2007, August 21, 2007, and September 7, 2007. See *Psychological Report from* [REDACTED], dated June 10, 2008. From these visits, the applicant’s spouse submitted appointment notices, a bill, a prescription for Fluoxetine, and a glucose lab test from August 18, 2007. The applicant’s spouse also submitted a report from [REDACTED]

containing a diagnosis of hyperglycemia, polyuria, anxiety, depression, and situational disorder. *See Report from* [REDACTED] dated August 25, 2007. A report from Pacific Neuropsychiatric Specialists was submitted, which indicated a diagnosis of major depressive disorder, recurrent, severe with psychotic features, and prescribes Lexapro and Seroquel. *See Pacific Neuropsychiatric Specialists Initial Exam*, dated September 4, 2007. Finally, the applicant's spouse submitted a report from a therapist with a diagnosis of major depressive disorder, with suicidal ideations at times; generalized anxiety disorder; and hyperglycemia. *See Psychological Report from* [REDACTED]. It was recommended that the applicant's spouse continue with his prescribed psychiatric medication and psychological counseling. *Id.*

The applicant's spouse further asserts that he is unable to financially maintain two households, his household in the United States and the applicant's household in Mexico. *See Declaration of* [REDACTED]. The applicant has submitted several child support payment checks and evidence that he sends money to the applicant in Mexico, including receipts and money orders.

The record reflects that the cumulative effect of the emotional and financial hardships the applicant's spouse is experiencing due to separation from his wife rise to the level of extreme. The AAO thus concludes that were the applicant's spouse to remain in the United States without the applicant due to her inadmissibility, the applicant's spouse would suffer extreme hardship.

The applicant's spouse contends that he would experience hardship if he relocated to Mexico to live with the applicant. The applicant's spouse explains that he has been living in the United States since 1973, when he was fifteen years old. [REDACTED] United States Citizenship and Immigration Services (USCIS) records also indicate that the applicant's spouse obtained temporary resident status on December 1, 1987, based on his residence in the United States prior to 1982. The applicant's spouse notes that he owns his own home in the United States and has been employed by the same company, KCA Electronics, Inc., since 1994. *See Letter from KCA Electronics, Inc.*, dated May 22, 2007; *Grant Deed*, dated July 23, 2002. Further, the applicant's spouse claims that he is worried about employment opportunities in Mexico and would fear for his safety if he relocated. It is noted that the Department of State has recently issued travel warnings concerning Mexico:

You should be especially aware of safety and security concerns when visiting the northern border states of Northern Baja California, Sonora, Chihuahua, Nuevo Leon, and Tamaulipas. Much of the country's narcotics-related violence has occurred in the border region. More than a third of all U.S. citizens killed in Mexico in 2010 whose deaths were reported to the U.S. government were killed in the border cities of Ciudad Juarez and Tijuana. Narcotics-related homicide rates in the border states of Nuevo Leon and Tamaulipas have increased dramatically in the past two years.

*Travel Warning-Mexico, U.S. Department of State*, dated April 22, 2011.

The applicant's spouse further states that he is unable to relocate to Mexico because of his strong familial ties in the United States. His eleven brothers and sisters live in the United States and he is the father of two U.S. citizen daughters, the younger born on December 11, 1991. [REDACTED]

[REDACTED] The applicant's spouse submitted evidence of child support payments for his younger daughter and his younger daughter submitted a letter on his behalf. In it, she states that she lives with her father on the weekends, he drives her to school on the weekdays, and he provides her with emotional and financial support. *Letter from [REDACTED]* dated June 14, 2008. In addition, his daughter writes that she would be unable to visit him if he moved to Mexico because her mother cannot afford the travel expense. *Id.*

The record establishes that the applicant's spouse is a fifty-two year-old naturalized U.S. citizen who has been living in the United States for over thirty-seven years. If he relocated to Mexico, he would leave behind eleven brothers and sisters, in addition to his two U.S. citizen daughters from prior relationships, who live in the United States. The applicant's spouse submitted proof that he provides financial support for his younger daughter and lives with her on the weekends. He apparently shared custody of his younger daughter with her mother and his daughter indicates that she would be unable to visit him in Mexico, due to financial constraints. The applicant's spouse currently owns his own home in the United States, has been working for the same employer for over sixteen years, and fears for his safety and financial well-being in Mexico. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, if he were to relocate to Mexico, rise to the level of extreme hardship.

Considered in the aggregate, the applicant has established that his 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-Moralez*, 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 AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin*, *supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin*, *supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable

factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Moralez* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). .

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors include the extreme hardships the applicant's U.S. citizen spouse would face if the applicant were to reside in Mexico, regardless of whether he accompanied the applicant or remained in the United States; the applicant's apparent lack of a criminal record; letters of support filed on the applicant's behalf; and the passage of nearly ten years since the applicant's unlawful entry to the United States. The unfavorable factors in this matter include the applicant's unlawful entry into the United States, in addition to her unlawful presence while 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.