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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 17 2012

Office: MILWAUKEE

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:  
[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,

*Perry Rhew*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Milwaukee, Wisconsin, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application is approved. The matter will be returned to the field office director for continued processing.

The record reflects that the applicant is a native and citizen of Mexico who entered the United States in November 2002 with a valid nonimmigrant visa, with permission to remain until May 2003. The applicant remained beyond the period of authorized stay. In May 2005, the applicant filed a Form I-687, Application for Status as a Temporary Resident.<sup>1</sup> In July 2005, the applicant was issued the Form I-512, Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and re-enter the United States. The applicant's Form I-687 was denied on March 17, 2006. The applicant submitted a Form I-485 application in July 2007, which was denied in July 2009. Pursuant to the record, the applicant continues to reside in the United States.

The applicant accrued unlawful presence from May 2003 until he filed the Form I-687 application in May 2005. Thus, the applicant is 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. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded 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 28, 2009.

In support of the appeal, counsel for the applicant submits the following: a brief, dated September 26, 2009; an affidavit from the applicant's spouse; a letter in support from the applicant's spouse's daughter; medical documentation pertaining to the applicant's spouse's granddaughter; an affidavit from the applicant's spouse's sibling; academic information pertaining to the applicant's spouse's son; and financial documentation. The entire record was reviewed and considered in rendering this decision.

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

(B) Aliens Unlawfully Present.-

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<sup>1</sup> Aliens with pending legalization applications and LIFE legalization applications do not accrue unlawful presence by virtue of USCIS policy for purposes of section 212(a)(9)(B) of the Act. *See Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act*, dated May 6, 2009.

(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...

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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the applicant's spouse's children, grandchild or sibling can be considered only insofar as it results in hardship to a qualifying relative. 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 U.S. citizen spouse contends that she would suffer extreme hardship were she to remain in the United States while her husband relocates abroad due to his inadmissibility. The applicant's spouse asserts that her husband is the pillar in her life and has been by her side through the good and the bad and long-term separation from him would cause her hardship. The applicant's spouse explains that her granddaughter was diagnosed with leukemia and her sister has multiple sclerosis and had kidney surgery, and she thus needs her husband by her side to provide emotional support while she helps care for her relatives. She further contends that she recently lost her job as a result of her absences to visit her sick granddaughter and thus needs her husband to continue his gainful employment that will permit him to provide her with medical insurance, pay for all the

household expenses and handle all the expenses associated with their new cleaning business. Finally, the applicant's spouse references that she is depressed and her psoriasis has spread all over her body, and she thus needs her husband and continued medical coverage through his employment to get better. *Letter from Lydia M. Roman*, dated September 25, 2009.

In support, a letter has been provided from the applicant's spouse's daughter, Kimeecha Rivera Roman, confirming that her daughter has been diagnosed with Acute Lymphoblast Leukemia, a childhood cancer, and noting that she and her daughter rely on the applicant's spouse for support and assistance, particularly when her daughter requires chemotherapy and a hospital stay. *Affidavit from [REDACTED]*, dated September 25, 2009. In addition, a letter has been provided from the applicant's spouse's grandchild's treating physician confirming her cancer diagnosis and the treatment plan, including frequent hospital admissions and stays and infusion on a weekly to bi-weekly basis. *Letter from [REDACTED]* dated September 9, 2009. Moreover, a letter has been provided from the applicant's spouse's sister noting that the applicant's spouse plays a critical role in her care and were the applicant to relocate abroad, her sister would be emotionally devastated and furthermore, would not be able to continue to help her as she would need to find employment to support herself. *Affidavit in Support from [REDACTED]* dated September 25, 2009.

Further, a letter has been provided confirming that the applicant's spouse has been treated for depression/anxiety and medicated and moreover, has received individual psychotherapy as a result of her family issues and depression. *Letter from [REDACTED], Psychotherapist, Sixteenth Street Behavioral Health Center*, dated January 24, 2008. Letters have also been provided confirming that the applicant's spouse suffers from Psoriasis, a lifelong skin condition, and Hypertension, and needs continued follow-up and treatment. *Letter from [REDACTED]* dated February 5, 2008 and *Letter from [REDACTED]* dated August 21, 2009. In addition, evidence of the applicant's gainful employment, since March 2005, with [REDACTED], earning over \$12 plus full benefits, including medical coverage for himself and his wife, has been provided. *Letter from [REDACTED]* dated September 11, 2009 and *Letter from [REDACTED]* dated August 24, 2009. Documentation has also been provided establishing the applicant's ownership of a cleaning business, [REDACTED] *Certificate of Incorporation*, dated August 19, 2009. Finally, numerous letters in support have been provided attesting to the hardships the applicant's spouse will experience due to her husband's inadmissibility. Based on a totality of the circumstances, the AAO concludes that were the applicant to relocate abroad, his wife would experience extreme hardship.

The applicant's U.S. citizen spouse asserts that she does not want to relocate to Mexico to reside with the applicant due to his inadmissibility. She explains that she was born and raised in Puerto Rico and has no ties to Mexico and long-term separation from her family, including her sibling, children and grandchild, her friends and her community would cause her hardship. Moreover, the applicant's spouse asserts that long-term separation from her sick grandchild and sibling, and the

inability to help care for them on an ongoing basis, would cause her hardship. Finally, the applicant's spouse notes that her son has no ties to Mexico and a relocation abroad would cause him hardship. *Supra* at 1-2 and *Affidavit of* [REDACTED] dated February 5, 2008.

The record reflects that the applicant's spouse was born and raised in Puerto Rico. Were she to relocate to Mexico to reside with the applicant, she would have to adjust to a country with which she is not familiar. She would have to leave her community, her family, most notably her daughter, her cancer-stricken grandchild and her ailing sibling, the physicians familiar with her medical conditions and health coverage through her husband's current employment, and she would be concerned for her physical, emotional and financial well-being in Mexico. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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 . . . 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to relocate to Mexico, regardless of whether she accompanied the applicant or stayed in the United States, his community ties, his long-term gainful employment, his business ownership, support letters from the applicant's family, friends and community leaders, including [REDACTED] the payment of taxes, the apparent lack of a criminal record, and the passage of more than eight years since the applicant period of unlawful presence began. The unfavorable factors in this matter are the applicant's periods of unlawful presence and unlawful employment while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application 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, 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, this appeal will be sustained and the I-601 waiver application approved.

**ORDER:** The appeal is sustained. The waiver application is approved. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.