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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: **JAN 12 2012**

Office: MEXICO CITY (CIUDAD JUAREZ) FILE: 

IN RE: Applicant: 

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office 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 record establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in January 2000 and remained until January 2008, when she voluntarily departed. She was thus 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. The applicant does not contest this finding of inadmissibility. Rather, she is seeking a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and their U.S.-born children.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, dated September 22, 2009.

In support of the appeal, the applicant's spouse submits documentation, including his own statements; psychological evaluations of three children; medical records and doctors' prescriptions for the children; bank transfers and documents regarding financial obligations, including a loan statement and telephone bills; and a letter of support from his employer. The record also contains documents submitted in support of the waiver application, such as birth certificates, a marriage certificate, and a letter of support from his employer. The entire record was reviewed and considered in rendering this decision.

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

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 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) 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 the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's U.S. citizen spouse contends that he is suffering emotional and financial hardship due to his wife's inability to reside in the United States. His letters indicate he is concerned about the health and emotional problems displayed by his young children, now age 5½, 8, and 11, which required him to retrieve them from Mexico and bring them to live with him in the United States. The record shows that, when the applicant went to Mexico to await waiver processing, her three young children accompanied her; however, the qualifying relative reports having "to go and get my kids from Mexico" due to problems ranging from frequent illness of his previously healthy daughter and his two sons, who local educators said displayed behavioral problems, such as being unable to get along with classmates and having trouble communicating. The younger son was noted to be stuttering and to be suffering from recurring respiratory infections. *See Statements of Teachers and Doctors*, dated from March to September 2009. The AAO is unable to consider what appear to be untranslated medical prescriptions for each of the children, but doctors' statements on the record support the claim that the children were being treated for various illnesses. Noting his wife and their three children were sharing living quarters with eight other people, the applicant's husband stated, "[t]hese crowded conditions make me fear that my children will be more likely to contract diseases . . ." *Statement of* [REDACTED], undated. Confirming the negative impact of these circumstances on the applicant's husband, a friend states, "He is truly distressed and frightened for his family. His anxiety has grown worse as his hope has grown smaller." *Statement of* [REDACTED] concluding the qualifying spouse's undated statement.

The emotional hardship claim is bolstered by a record showing that, despite once stating his night shift work prevented him from having the children live with him, the applicant's husband became concerned enough for their health and safety to arrange matters so that they could be with him. Two employer letters state, however, that his previously excellent performance had been marred by increasing lapses of concentration and depression after his wife left for Mexico. *See Statements of Flowers Bakery*, dated September 16, 2008 and September 11, 2009. These observations support his own claims that stress has caused him to have trouble sleeping, and the 2009 letter from his employer states that he has sought medical treatment for his anxiety.

The applicant's husband further states the separation is imposing financial hardship by ending the division of labor that had him as the breadwinner and the applicant as the homemaker. He provides details of his income to support the assertion that absence of the applicant and having to maintain two households have made it difficult to make ends meet. He claims to have used his life savings to buy his family a home and, while not supplying any earnings history for his wife, makes clear in another letter that he expected her eventual income to help pay for it. *See Statement of* [REDACTED] [REDACTED] dated September 14, 2009.

The record contains information about deterioration of the Mexican economy, as well as evidence of a mortgage and other household expenses, to support the assertion that the applicant's husband is having difficulty supporting the applicant, who is unable to find work in Mexico, with one income. Finally his employer states that he must resolve performance issues such as lapses in concentration to avoid possible termination. *See Statement of* [REDACTED] [REDACTED] dated September 16, 2008. The record therefore reflects that the cumulative effect of the emotional and financial hardships the applicant's spouse is experiencing due to his wife's inadmissibility rises to the level of extreme. The AAO thus concludes that, were the applicant's husband to remain in the United States without the applicant due to her inadmissibility, he would suffer extreme hardship.

The qualifying relative contends on appeal that he would experience hardship if he relocated abroad to reside with the applicant. He says that moving to Mexico would involve leaving the country of his birth and settling where he has no ties and poor job prospects. The record indicates that his mother lives and works in the United States, and provides part-time care to his children. Furthermore, the record shows that, when the children relocated to Mexico with their mother to await waiver processing, their serious medical and behavioral adjustment problems forced him to bring them back to the United States. The record reflects that he has greater ties to the United States than to a country where he has never lived and has no family (other than the applicant). The applicant's husband's claim to be frightened by the drug-related violence in Mexico is supported both by the information he provides about crime in the country and by a U.S. Department of State Travel Warning issued in April 2011 regarding the security situation there.

Regarding the contention that Mexico is unsafe because of ongoing wars between drug lords and police, the AAO notes that the DOS advises U.S. citizens to defer non-essential travel to a number of areas or, if travel is necessary, to exercise a high degree of vigilance due to increased narcotics-related violence since 2010:

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. [...] Narcotics-related homicide rates in the border states of Nuevo Leon and Tamaulipas have increased dramatically in the past two years.

....

San Luis Potosí: In February 2011, one U.S. government employee was killed and another wounded when they were attacked in their U.S. government vehicle on Highway 57 near Santa Maria del Rio. The incident remains under investigation. Cartel violence and highway lawlessness have increased throughout the state and are a continuing security concern. All official U.S. government employees and their families have been advised to defer travel on the entire stretch of highway 57D in San Luis Potosí as well as travel in the state east of highway 57D towards Tamaulipas. You should defer non-essential travel in these areas.

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

The AAO observes that San Luis Potosí, where the applicant currently resides, is specifically mentioned in the warning. Based on a totality of the circumstances, the AAO concludes that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant.

The documentation in the record, when considered in its totality, reflects that the applicant has established that her 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.

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 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. In evaluating whether relief is warranted in the exercise of discretion, the BIA stated:

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 favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse and children would face if the applicant were to reside in Mexico, regardless of whether they accompanied the applicant or remained in the United States; the applicant's apparent lack of any criminal convictions; a supporting declaration from the pastor of the family's church; the applicant's contribution to the household economy by caring for her three children and maintaining the family home; and the passage of nearly 12 years since the applicant's unlawful entry to the United States. The unfavorable factors in this matter are the applicant's unlawful entry into the United States and unlawful presence while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds the applicant has established that the favorable factors in her 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 met that burden. Accordingly, this appeal will be sustained and the application approved.

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