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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

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Date: **JAN 13 2012**

Office: CIUDAD JUAREZ

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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,

for

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 and the waiver application will be approved.

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 again seeking admission within ten years of his last departure from the United States. The applicant is the spouse of a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated May 21, 2009, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated May 21, 2009.

In an appeal brief, the applicant's attorney contends that the qualifying spouse is suffering emotional, psychological, physical and financial hardships due to her separation from the applicant. Further, the applicant's attorney stated that the qualifying spouse has strong emotional, family and financial ties to the United States. The qualifying spouse's affidavit also states that she is having a very difficult time taking care of three small children by herself, and that she cannot relocate to Mexico because her mother is having medical problems.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), briefs from the applicant's attorney, affidavits and a letter from the qualifying spouse, medical documentation regarding the qualifying spouse's mother, financial documentation, information regarding food stamps and other state programs, proof of the qualifying spouse and her children's enrollment in state programs, the qualifying spouse's birth certificate, birth certificates for the applicant and qualifying spouse's children, a marriage license, a letter from the qualifying spouse's employer, financial documentation for the qualifying spouse's parents, letters from friends, photographs, documentation regarding the applicant's criminal history, a letter from the children's doctor and some of their medical records and an approved Petition for Alien Relative (Form I-130).

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

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

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.

The decision of the Field Office Director does not address whether the applicant's conviction for Theft of Lost or Mislaid property is a crime involving moral turpitude rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act or whether he is eligible for the "petty offense" exception under section 212(a)(2)(A)(ii) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not review the determination of whether the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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 wife 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 qualifying relative in this case is his wife, who is a United States citizen. The record indicates that the applicant entered the United States in February 1998 without inspection and remained until November 2007, when he voluntarily departed. The applicant accrued unlawful presence from May 6, 1999, when he turned eighteen, until November 2007 when he voluntarily departed, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. The applicant has not disputed his inadmissibility. Therefore, the applicant is inadmissible to the United States 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.

The record contains Form I-601, Form I-290B, briefs from the applicant's attorney, affidavits and a letter from the qualifying spouse, medical documentation regarding the qualifying spouse's mother, financial documentation, information regarding food stamps and other state programs, proof of the qualifying spouse and her children's enrollment in state programs, birth certificates for the applicant and qualifying spouse's children, a letter from the qualifying spouse's employer and letters from friends.

As previously stated, the applicant's attorney contends that the qualifying spouse is suffering emotional, psychological, physical and financial hardships due to her separation from the applicant. Further, the applicant's attorney stated that the qualifying spouse has strong emotional, family and financial ties to the United States. The qualifying spouse's affidavit also states that she is having a very difficult time taking care of three small children by herself, and that she cannot relocate to Mexico because her mother is having medical problems.

The applicant's attorney asserts that the qualifying spouse is suffering emotional and psychological hardships as a result of her separation from the applicant. The record contains affidavits and a letter from the qualifying relative and letters from friends and coworkers. This evidence confirms that she is struggling emotionally as a single mother of three young children. With regard to the qualifying spouse's financial hardship, the applicant's attorney contends that the qualifying spouse is struggling without any financial assistance from the applicant. The applicant's attorney indicates that the applicant had provided child care for their children when he lived in the United States, allowing the qualifying spouse to work additional hours, and that he also contributed financially to their family. A letter from the qualifying spouse's coworker confirms that the qualifying spouse had to cut back on her hours at work due to the applicant's absence, and statements from the qualifying spouse also indicate the same. Further, the record contains tax returns for the qualifying spouse; proof of her expenses, debts, and coverage by state-funded programs; and banking documentation. This evidence demonstrates that the qualifying spouse has significant debts and her expenses exceed her income. The evidence also supports the assertions by the applicant's attorney that the qualifying spouse is struggling to provide for her family without the financial help and child care assistance from her husband. As such, when considered in the aggregate, the documentation provided regarding the qualifying spouse's financial, emotional and psychological hardships demonstrate that she will suffer extreme hardship if she were to remain in the United States without the applicant.

The applicant has also demonstrated that his qualifying spouse would suffer extreme hardship in the event that she relocated to Mexico with the applicant. The qualifying spouse was born in the United States and has lived here for her entire life. In one of her affidavits, the qualifying spouse indicates that almost her entire family lives within seven blocks of each other, including four of her five siblings and her parents. The qualifying spouse also describes her close relationships with her siblings and parents. Further, the qualifying spouse's three children were born and live in the United States. The record contains birth certificates for the qualifying spouse's children and her parents' tax return, which confirms that they live in the United States. The applicant's attorney also notes that the qualifying spouse has financial ties to the United States. The record contains extensive documentation of the qualifying spouse's finances, responsibilities and expenses, including her debts. The evidence demonstrates that the qualifying spouse has many financial responsibilities in

the United States including car payments, credit card debts and other expenses. Further, the applicant's attorney asserts that the qualifying spouse cannot relocate to Mexico because her mother is having medical issues, including severe obstructive lung disease for which she has been evaluated for a lung transplant. The record contains proof of the qualifying spouse's mother's medical issues and the severity and extent of her medical problems. In addition, the qualifying spouse, in one of her affidavits, raises her concerns regarding the country conditions in Mexico and the availability of employment. The qualifying spouse also notes that she would lose her current position and potential for a career in pharmacy if she relocated to Mexico. The record contains a letter from her employer, indicating her employment status, and letters from coworkers, which indicate her career goals to become a pharmacist. The AAO concludes that, were the applicant's spouse to relocate to Mexico with the applicant, she would suffer extreme hardship due to her length of residence in the United States, her close ties to the United States and her potential financial hardships and a loss of career.

Considered in the aggregate, the applicant has established that his wife 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-Morales*, 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.

In *Matter of Mendez-Morales*, 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 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 in this matter are the hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, and the applicant's support from the qualifying spouse, family and friends. The unfavorable factors in this matter are the applicant's accrual of unlawful presence in the United States and his prior criminal offenses.

Although the applicant's violations of the immigration and criminal laws cannot be condoned, the positive factors in this case outweigh the negative factors. The AAO therefore finds that a favorable exercise of discretion is warranted. 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 his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.