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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

PUBLIC COPY



H6

Date: JAN 31 2012

Office: MEXICO CITY

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, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant, a native and citizen of Mexico, entered the United States in 1993 as a non-immigrant, and remained in the United States longer than the period authorized. The applicant departed in July 2008. The applicant was thus 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 does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with her 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 Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 11, 2009.

The record contains the following documentation: a report of psychological evaluation of the applicant's spouse and son, statements by the applicant's spouse, financial documentation, and additional medical documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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) 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. Hardship to the applicant 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 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 record includes a psychological evaluation of the applicant's husband and the applicant's son. According to the evaluation, the applicant's spouse is suffering from Major Depressive Disorder, Single Episode, Moderate, characterized by overwhelming feelings of sadness, decreased motivation and energy, and a lack of concentration. The diagnosis indicates that the psychological and environmental stressors causing this disorder are immigration issues, parenting issues, and potential decrease in his family support system if the applicant is not allowed to return to the United States. *See Psychological Evaluation by [REDACTED]*, dated October 7, 2009. In addition, the record includes medical documents stating that the applicant's spouse is suffering from anxiety, stress, and insomnia, and was prescribed medication. *See Statement of [REDACTED], M.D.*, dated September 18, 2008.

The applicant's spouse states that he is suffering from financial hardship since the applicant returned to Mexico in 2008. *See Affidavit of [REDACTED]*, undated, submitted with Form I-601 on September 3, 2008. The record includes financial documentation which indicates that the applicant was delinquent on payments on his auto loan, a student loan, and several credit card balances. In addition, the record includes a statement from the applicant's employer, stating that he is a hardworking employee, but that since the applicant departed the United States, the applicant's spouse has lost concentration, has no longer been interacting with co-workers, is less talkative, and at times is very emotional. *See [REDACTED] and [REDACTED]*, dated September 11, 2008.

In addition, the record indicates that the applicant's son has suffered from a blood condition since birth. According to information contained in the psychological report, the applicant's son was delivered by Cesarean Section due to a low heart rate, and suffered from a low hemoglobin count, requiring a blood transfusion and a two-week hospitalization. The applicant's son requires monitoring of his hemoglobin levels. *See Psychological Evaluation by [REDACTED]*, dated October 7, 2009. The record contains medical documentation for the applicant's son, verifying that the hemoglobin count was very low. There is further indication that the applicant's son has asthma. *See Affidavit of [REDACTED]*, undated, submitted with Form I-601 on September 3, 2008; *See also Statement of [REDACTED]*, dated September 16, 2008. Under section 212(a)(9)(B)(v) of the Act, children are not deemed to be "qualifying

relatives.” However, although children are not qualifying relatives under this statute, USCIS does consider that a child’s hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. In this case, the psychological evaluation of the applicant’s spouse indicates that the applicant’s spouse is suffering from emotional hardship due to the separation from his son. The psychological evaluation indicates that the applicant’s spouse is concerned about the availability of adequate medical treatment in Mexico, as there are only two pediatricians in the location where the applicant and her son are staying, which is causing further stress to the applicant’s spouse. *See Psychological Evaluation by [REDACTED]* dated October 7, 2009.

The record further indicates that the applicant’s spouse would experience hardship were he to relocate to Mexico with the applicant. The applicant’s spouse was born in the United States. The record indicates that the applicant’s son has medical problems, and also that the applicant suffers from low blood pressure and weight loss. *See Affidavit of [REDACTED]* undated, submitted with Form I-601 on September 3, 2008. The applicant’s spouse has never lived in Mexico, and is concerned about employment opportunities, and the ability to obtain adequate health care coverage for the applicant and the applicant’s son. *See Psychological Evaluation by [REDACTED]* dated October 7, 2009. In addition, the applicant’s spouse states that he is concerned about the high crime rate in the location where the applicant and the applicant’s son are now living, in the Mexican state of [REDACTED]. The AAO notes that the U.S. Department of State has issued a travel warning for Mexico specifically referencing [REDACTED] where the applicant resides.¹ Thus, based on the evidence on the record, the applicant has established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Mexico to reside with the applicant.

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).

¹ As noted by the U.S. Department of State:

You should be especially aware of safety and security concerns when visiting the northern border states of [REDACTED]. 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 [REDACTED]. Narcotics-related homicide rates in the border states of [REDACTED] have increased dramatically in the past two years.

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-Morales*, 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 hardships the applicant's U.S. citizen spouse and U.S. Citizen son 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 a criminal record; and the passage of more than 15 years since the applicant overstayed her non-immigrant visa status. 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 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 application approved.

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