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



U.S. Citizenship
and Immigration
Services



H/6

DATE: JUL 05 2012

Office: MONTERREY, MEXICO

FILE: [REDACTED]

IN RE: [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:

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,

A handwritten signature in cursive script that reads "Perry Rhew".

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Monterrey, Mexico and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a 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 seeking admission within 10 years of his last departure. The applicant is the spouse of a U.S. citizen. He seeks a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse and son.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated July 14, 2010.

On appeal, the applicant's spouse asserts that she will experience extreme hardship if the applicant's waiver is denied, and submits new evidence for consideration. *See the statements of the applicant's spouse*, dated June 28, 2010 and September 3, 2010.

The evidence of record includes, but is not limited to: statements from the applicant's spouse, family, and friends; medical documents for the applicant's family members; family photographs; financial documents; copies of receipts for money transfers; copies of relationship and identification documents; and documents in Spanish.

8 C.F.R. § 103.2(b) states:

(3) Translations. Any 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.

As such, the Spanish-language documents without English translations cannot be considered in analyzing this case. However, the rest of the record was reviewed and all relevant evidence was considered in reaching a decision on the appeal.

Section 212(a)(9) states 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

The record reflects that the applicant entered the United States in June 1999 without inspection and remained until October 2007, when he voluntarily departed the United States. The AAO finds that the applicant accrued over one year of unlawful presence. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his 2007 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility.

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.

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 or other family members 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

In the present case, the record reflects that the applicant is married to a U.S. citizen. The applicant's spouse meets the definition of a qualifying relative. The applicant's child is not a qualifying relative for purposes of the waiver sought and, therefore, any hardship he might experience as a result of the applicant's inadmissibility will be considered only to the extent it results in hardship to the applicant's spouse.

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, 631-32 (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, “[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., In re 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, the applicant's spouse states that separation from the applicant has caused her extreme emotional hardship. After applicant's departure, his spouse rented a room in an apartment from a family for her and their son. This arrangement created difficulties regarding privacy and space, and therefore the applicant's spouse and their son spent most of their time in one room to avoid conflict. The applicant's spouse also is worried that their son's separation from the applicant negatively affected their son, who has a very close relationship with the applicant. After visiting the applicant in Mexico, their son did not want to return to the United States. The applicant's spouse also states that she is unable to manage the responsibility of raising their son alone due to the tragic death of her niece, who choked while she was babysitting her. She states that she is so traumatized by her niece's death that she "freeze[s] in fear" when her son coughs.

The applicant's spouse states that being separated from the applicant and her son was very difficult for her. She also states that their separation made her feel that their marriage was falling apart. She was diagnosed with depression and received treatment in the United States. She felt sad, lonely, and could not sleep. She states that she contemplated "ending [her] life." The applicant's spouse had moved to Mexico when she learned that her father was in the hospital, and by the time she returned to be with her father, he was unconscious. She feels guilty about moving to Mexico and not being able to communicate with her father while he was hospitalized. The record indicates that the applicant's father-in-law died in May 2010.

The applicant's spouse moved to Mexico in May 2010 to be with the applicant and their son. They live with the applicant's parents in a small two-bedroom house that has no indoor sink and no privacy; the bathroom is located next to the kitchen and has a curtain instead of a door. The record contains photographs depicting the conditions of the house and the town in which the applicant, his spouse, and their son live. The area's limited educational services end at ninth grade. The applicant is unemployed and they have no health insurance. She is concerned about their son's health, education, and safety in Mexico.

In her May 2, 2009 psychological evaluation, [REDACTED], a licensed clinical social worker, indicates that the applicant's spouse was diagnosed with major depression and her scores on the Beck Inventory indicate her depression is severe. According to [REDACTED] the applicant's spouse fears that her marriage is over, she will have to support their son alone, and "despite

extended family support,” is having financial difficulties. She states that the applicant’s return to the United States will alleviate the applicant’s spouse’s “significant” economic hardship and severe depression.

With respect to the applicant’s spouse’s financial hardship, the record contains evidence of money transfers that she made for the applicant and bank account statements that reflect a steady decrease in the account balance. Letters and office memoranda from the applicant’s spouse’s former employer indicate that her work hours were decreased to 30 hours per week due to economic conditions. She was earning \$11.36 per hour. Letters from family and friends indicate that the applicant’s spouse was having financial difficulties resulting from the decrease in her work hours and was borrowing money from her family members. The applicant’s spouse states that her “savings are gone.” She states that the applicant’s parents are not able to financially assist them. The applicant submitted classified ads showing available jobs in their community in the United States.

The applicant’s spouse’s sister states that the applicant’s spouse has been “suffering” since the applicant’s departure, “worrying about tomorrow, if she’ll be able to make it through another day.” She also states that the applicant’s spouse is in danger in Mexico, which “has become a battlefield between drug dealers.”

Letters from family members and friends attest to the loving relationship the applicant and his spouse have. They also indicate that the applicant’s spouse was having emotional and financial difficulties after the applicant’s departure.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant’s spouse would experience extreme hardship on separation. In reaching this conclusion, we note the applicant’s spouse’s mental condition, effects of their son’s hardship on her, and the financial hardship she experienced after the applicant’s departure. The record contains evidence that stress caused by their separation coupled with the applicant’s father-in-law’s death has negatively affected the applicant’s spouse’s mental health. The record indicates that the applicant’s spouse has a history of depression and requires treatment. The psychological evaluation, letters from family and friends indicate that the applicant’s spouse is not able to handle stress effectively, and the stress caused by separation from the applicant and their son has caused extreme hardship for the applicant’s spouse. The record indicates that the applicant’s spouse is vulnerable to high levels of stress in raising their son alone and can benefit from the applicant’s presence and emotional support. The record also indicates that the applicant’s spouse has experienced financial difficulties resulting from their separation. Documentary evidence and statements from family and friends corroborate the applicant’s spouse’s claims of emotional and financial hardship.

The AAO also finds the record to establish that the applicant’s spouse is experiencing extreme hardship resulting from her relocation to Mexico. The record contains evidence that the applicant’s spouse is experiencing financial hardship and lives in difficult conditions in Mexico. The AAO also notes the applicant’s spouse’s safety concerns in Mexico. The U.S. Department of

State (DOS) has issued a travel warning for Mexico, updated on February 8, 2012, which indicates crime and violence by transnational criminal organizations are serious safety problems and can occur anywhere in Mexico. The report indicates that the rising number of kidnappings and disappearances throughout Mexico is of particular concern. The record also reflects the following concerns about relocating to Mexico: the applicant's spouse's close family ties to the United States, a lack of job opportunities; a lack of quality health care for the applicant's spouse and their son; and a lower quality of available educational options for their son. The AAO concludes that the applicant's spouse is experiencing extreme hardship resulting from her relocation to Mexico.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied. The applicant has established statutory eligibility for a waiver of his inadmissibility under section 212(a)(9)(v) of the Act.

In that the applicant has established that the bar to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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, 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 adverse factors in the present case are the applicant's entry without inspection and unlawful presence in the United States, for which he now seeks a waiver. The mitigating factors include the applicant's U.S. citizen spouse and child, the extreme hardship to his spouse if the waiver application is denied, the applicant's spouse's mental condition, and the applicant's spouse's ties to the United States.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.