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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: JUL 09 2012 Office: MEXICO CITY, MEXICO  
(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 (INA), 8 U.S.C. § 1182(a)(9)(B)(v)

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, Mexico City, denied the instant waiver application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decisions of the district director and the AAO will be withdrawn and the application will be approved.

The record reflects that the applicant is a native and citizen of Mexico, the spouse of a U.S. citizen, the mother of a U.S. citizen son, and the beneficiary of an approved Form I-130 petition. The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her spouse and son.

The district director found that the applicant had not established that failure to approve the waiver application would cause extreme hardship to her U.S. citizen spouse, and denied the application. *Decision of the District Director*, dated September 7, 2006. The AAO also found that the applicant had not established that failure to approve the waiver application would cause extreme hardship to her U.S. citizen spouse, and dismissed the appeal accordingly. *AAO Decision*, dated December 8, 2009.

On motion, counsel states that he was directed to send the appeal brief and additional evidence to the U.S. Consulate in Ciudad Juarez and the AAO did not receive it and therefore the brief and additional evidence was not taken into account in its decision. *Form I-290B*, dated December 16, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, and financial records and medical records.

The record reflects that the applicant entered the United States without inspection in February 2001, she turned 18 years-old on May 13, 2003, and she departed the United States in July 2005. The applicant accrued unlawful presence from May 13, 2003, the date she turned 18 years-old, until July 2005, the date she departed the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of her July 2005 departure from the United States.

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.

....

- (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 [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 section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her child is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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.

Counsel states that the applicant’s spouse was born and raised in the United States; he has resided in southern California his entire life and has strong ties to the community; his and the applicant’s son was born and raised in the United States; their son is having an extremely difficult time adjusting to life in Mexico; the applicant’s spouse’s entire family lives in the United States, including his father, mother and sister; he has no immediate family members in Mexico; he is extremely close with his family; their son’s education will be disrupted due to the language barrier; the social and economic conditions in Mexico are far inferior to that of the United States; there is increasing violence in the area where the applicant and their child reside; their son has asthma which is believed to be due to pollution in Mexico; their son requires regular medical treatment; and the applicant’s spouse has respiratory problems. The record includes a letter from the applicant’s spouse’s parents and evidence of their legal status.

The applicant’s spouse states,

. . . my son has had trouble getting accustomed to the sudden change in foods and climate which has resulted in his weakening health. My wife explained that the doctors their [sic] refuse to give my son the full medical attention he needs because they are in no position to risk taking full responsibility for a patient from out of state.

The record includes medical documentation for the applicant's spouse and his son. The applicant's spouse states that he has many bills and responsibilities in the United States; he was robbed when visiting the applicant near Tijuana; the applicant's and their son's life would be in danger in Mexico; and there has been a tremendous amount of kidnappings and drug wars in [REDACTED] where the applicant would be staying with her mother.

The AAO notes the February 8, 2012 Department of State Travel Warning for Mexico which details general safety issues and specifically mentions safety issues in [REDACTED]. It states, in pertinent part:

[REDACTED] is a major city/travel destination in [REDACTED]. . . . You should defer non-essential travel to the state of Michoacán except the cities of [REDACTED] where you should exercise caution. Flying into [REDACTED] via highway 200 from [REDACTED] are the recommended methods of travel. Attacks on Mexican government officials, law enforcement and military personnel, and other incidents of TCO-related violence, have occurred throughout [REDACTED].

As mentioned, the record includes medical documentation for the applicant's spouse and his son. The AAO notes that the degree of their medical issues is not clear from the record. The record reflects that the applicant's spouse's parents are a U.S. citizen and lawful permanent resident, and they are in the United States. The record indicates that he has resided in the United States his entire life and he does not have immediate family ties in Mexico. The record reflects that the applicant's spouse would have legitimate safety concerns residing in [REDACTED]. Considering the hardship factors mentioned, and the normal results of relocation, the AAO finds that the applicant has established that her spouse would suffer extreme hardship if he relocated to Mexico.

The applicant's spouse states that the applicant changed his life; he was not a good person and not good in school, but he got his life together and finished high school; she helps him save money by looking for bargain prices and wisely using utilities; he cannot afford to support the applicant and himself; he would be able to go to college if she was in the United States; she takes care of him and their son; their son has been getting sick often in Mexico due to the climate; the applicant and their son's life would be in danger in Mexico; and there has been a tremendous amount of kidnappings and drug wars in [REDACTED] where she would be staying with her mother.

The applicant's spouse states that he would not want his family to be separated, and that if the applicant remained in Mexico and their son resided in the United States, he would be unable to work

full-time because he would be obliged to care for his son. He states that if the family is divided between Mexico and the United States he will be heartbroken, lonely, and depressed and his son will grow up without his mother's love. He states that prior to his marriage he drank alcohol and disregarded traffic regulations, but that living with her has reformed him. He states that living without his wife and child has caused him anxiety, stress, depression, insomnia, and even suicidal ideation. He states that the applicant's absence has caused him financial hardship.

Counsel states that the applicant's son needs the presence of both of his parents for normal childhood development; it has been necessary for the child to remain in Mexico with the applicant; their child continues to suffer extreme hardship from living in a foreign country and from separation from his father; the applicant's spouse is incurring additional expenses in maintaining a separate household in Mexico; he is unable to provide the necessary care for his son and also fulfill his employment responsibilities; and his and the applicant's financial obligations include: a monthly mortgage payment of [REDACTED] per month, various bills and credit card payments of several hundred dollars, and his child's medical bills in Mexico. The record includes numerous bills for the applicant's spouse. The record contains receipts showing that the applicant's spouse has transmitted money to the applicant in Mexico. The record contains airline ticket receipts showing that the applicant's spouse traveled to Mexico on several occasions. The record contains photocopies of telephone bills.

Although the record does not include documentary evidence that the applicant's spouse has anxiety, depression, insomnia, and suicidal ideation, it reflects that he would experience some emotional difficulty due to separation from the applicant as they have a close relationship. In addition, he is currently separated from this child and he has legitimate safety concerns for the applicant and his child. The record reflects that he has more financial obligations with his family in Mexico. Considering the hardship factors mentioned, and the normal results of relocation, the AAO finds that the applicant has established that her spouse would suffer extreme hardship if he remained in the United States.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

In evaluating whether section 212(h)(1)(B) 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).

*Id.* at 301.

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.

The favorable factors are the applicant's U.S. citizen spouse and child and extreme hardship to the applicant's spouse.

The AAO finds that the immigration violations committed by the applicant are serious in nature; nevertheless, when taken together, we find the favorable 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 rests with the applicant. *See* section 291 of the Act. Here, the applicant has met that burden. Accordingly, the previous decisions of the district director and the AAO will be withdrawn and the application will be approved.

**ORDER:** The previous decisions of the district director and the AAO are withdrawn and the application is approved.