

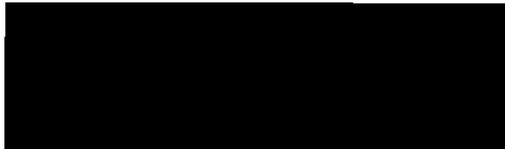
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H6

Date: JUL 23 2012 Office: MONTERREY, MEXICO FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATIONS: 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:



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

The record reflects that 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 seeking readmission within ten years of his last departure from the United States. The record indicates that the applicant is married to a U.S. citizen and the father of a U.S. citizen stepson. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to 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 stepson.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 12, 2010.

On appeal, the applicant, through counsel, asserts that "there is no requirement that [the applicant's wife] suffer 'great' actual or prospective injury," and previously submitted evidence establishes that she will suffer emotional hardship without the applicant. *Form I-290B, Notice of Appeal or Motion*, dated August 11, 2010. Counsel claims that the Field Office Director failed to address the applicant's wife's added responsibilities, now having to care for her elderly mother alone. *Id.* Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant's wife, letters of support, medical and psychological documentation for the applicant's wife and mother-in-law, school records for the applicant's stepson, and financial documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9) 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 [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 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. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Service (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 of Immigration Appeals (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-I-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.

In the present application, the record indicates that in May 1998, the applicant entered the United States without inspection. *See Form I-130, Petition for Alien Relative*, filed March 7, 2005. In March 2009, the applicant departed the United States. The applicant accrued over one year of unlawful presence between May 1998, and March 2009. The applicant is, therefore, 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 he seeks admission within 10 years of his departure from the United States. The applicant does not contest his inadmissibility.

The record contains references to hardship the applicant's stepson would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's stepson will not be separately considered, except as it may affect the applicant's spouse.

Regarding counsel's claim that "there is no requirement that [the applicant's wife] suffer 'great' actual or prospective injury," the AAO notes that there is no requirement that the applicant's wife suffer "great" actual or prospective injury. However, it must be established that she will suffer extreme hardship should she join the applicant in Mexico or remain in the United States without the applicant.

In her affidavit dated April 2009, the applicant's wife states she has lived in the United States her entire life and has taken only one trip outside the United States; she traveled to Mexico in 2007. She states the applicant is from a small city and he is currently residing with his stepfather; however, his stepfather is getting married and he has to find a new place to live. She believes that it would be difficult for her to obtain employment because she is not Mexican and employers prefer to hire Mexican citizens. In his appeal brief, counsel states the applicant's wife has no ties to Mexico and she would have difficulty finding employment in Mexico since her work experience is limited. Additionally, in a statement dated July 20, 2009, the applicant's wife states she cannot move to Mexico because her mother depends on her, and she could not leave her son. Medical documentation in the record establishes that the applicant's

mother-in-law suffers from glaucoma and hypertension, and she takes four different medications to help treat her medical conditions. The applicant's wife states she is depressed, feels nervous, and cannot eat or sleep well. In a statement dated April 14, 2009, licensed [REDACTED] states the applicant's wife is experiencing symptoms consistent with adjustment disorder with mixed depression and anxiety. In an updated statement dated August 20, 2010, [REDACTED] states the applicant's wife's mental health condition has "worsened significantly" since he first met with her. and he referred her for a consultation for anxiety and depression medication. Counsel claims that the applicant's wife would have difficulty finding treatment for her mental-health issues in Mexico. The record contains an article on treating mental-health disorders in Mexico that supports counsel's claim.

In a statement dated February 25, 2009, the applicant's mother-in-law states her daughter cannot live in Mexico because "it is bad," "there is no progress," and "there is so much violence." The AAO notes that on February 8, 2012, the Department of State issued a travel warning to U.S. citizens about the security situation in Mexico. The warning states that "the Mexican government has been engaged in an extensive effort to counter [Transnational Criminal Organizations] which engage in narcotics trafficking and other unlawful activities throughout Mexico.... As a result, crime and violence are serious problems throughout the country and can occur anywhere." The warning states U.S. citizens have been the victims of "homicide, gun battles, kidnapping, carjacking and highway robbery." The warning also states that the rise in "kidnappings and disappearances throughout Mexico is of particular concern."

Based on her safety concerns in Mexico, her minimal ties to Mexico, her separation from her family in the United States, her mother's reliance on her for medical assistance, her own medical issues and possible disruption of her treatment, her mental-health issues, and her limited employment prospects, the AAO finds that the applicant's wife would suffer extreme hardship if she were to join the applicant in Mexico.

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States, counsel states the applicant's wife is suffering financial hardship. In a statement dated March 4, 2009, [REDACTED] states that the applicant's wife financially supports her mother, her son who is attending college, and the applicant in Mexico. Documentation in the record establishes that the applicant's mother-in-law receives \$568.00 a month in Social Security benefits. The applicant's wife states that she supports the applicant in Mexico because he is unemployed and that her hours at her job were reduced. Documentation in the record establishes that the applicant's wife makes approximately \$650.00 every two weeks.

In his letter dated July 14, 2009, [REDACTED] states he was treating the applicant's wife for "strain/sprain to her thoracic spine." Counsel claims that because of the applicant's wife's back injury, the applicant was the primary caretaker of the home. Documentation in the record establishes that the applicant's wife suffered a work-related back injury, and she was receiving chiropractic treatments. However, the applicant's wife claims that though she still feels pain in her back, she cannot afford to see her chiropractor. The applicant's wife states the applicant would carry things for her and massage her back. The applicant's wife states she cannot take her mother to her doctor's appointments because she has to work, and this makes her depressed and nervous. The applicant's mother-in-law states that because

of her poor eyesight and health, the applicant was helping to care for her by taking her to her doctor's appointments. Medical documentation in the record corroborates statements by the applicant's spouse and her mother regarding her mother's medical conditions and treatment.

As noted above, documentation in the record establishes that the applicant's wife is experiencing symptoms consistent with adjustment disorder with mixed depression and anxiety, which has "worsened significantly" since 2009, and she was referred for a consultation for anxiety and depression medication. The applicant's wife states without the applicant, she has lost "emotional support and help at home." states, and court documents in the record confirm, that prior to meeting the applicant, the applicant's wife had a history of being in abusive relationships. He also states the applicant's wife "feels tremendous pressure and stress and worries a lot." The applicant's wife also fears for the applicant in Mexico because of the "dangers."

The AAO finds that when the applicant's spouse's hardships are considered in the aggregate, specifically her financial issues, mental-health issues, having to care for her ill mother alone, and her concern for the applicant's welfare in Mexico, the record establishes that the applicant's wife would face extreme hardship if she remained in the United States in his absence. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(a)(9)(B)(v) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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).

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).

See Matter of Mendez-Moralez, 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 include the applicant's entry without inspection and unlawful presence. The favorable and mitigating factors are the applicant's U.S. citizen wife and stepson; the extreme hardship to his wife if he were refused admission; the absence of a criminal record; and his good moral character as described in several letters of support.

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

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. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

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