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and Immigration  
Services

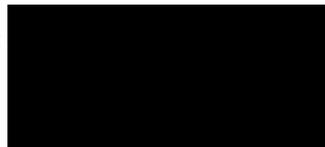
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DATE: JUN 01 2012 Office: CIUDAD JUAREZ, MEXICO FILE:



IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)  
of the Immigration and Nationality Act (the Act), 8 U.S.C. section 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 waiver application was denied by the Officer in Charge (OIC), Ciudad Juarez, Mexico and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a Motion to Reopen. The motion will be granted. The prior decision of the AAO will be withdrawn. The 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 Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure.<sup>1</sup> He is married to a United States citizen and has three U.S. citizen children. He 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).

The OIC concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 17, 2007. The AAO also found that the record failed to demonstrate that the applicant's spouse would experience extreme hardship if the waiver application was denied and dismissed the appeal accordingly. *Decision of the AAO Chief*, dated March 9, 2010.

On motion, counsel for the applicant submits additional evidence of hardship and asks that United States Citizenship and Immigration Services (USCIS) consider the various hardship impacts raised by the applicant in the aggregate. *Form I-290B*, received April 9, 2010.

In support of the motion, the record contains new statements from the applicant's spouse and counsel, a psychological evaluation of the applicant's spouse and birth certificates for her two youngest children. Evidence previously submitted by the applicant includes, but is not limited to, counsel's brief on appeal, an affidavit from the applicant's spouse, medical records for the applicant's mother-in-law, and a country conditions report on Mexico. The entire record was reviewed and all relevant evidence considered in reaching a decision in this matter.

In that the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) is not contested, the AAO will not address the bar to his admission, but will limit our review to the extent to which the record establishes that the applicant has satisfied the requirements of section 212(a)(9)(B)(v) of the Act, which provides:

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

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<sup>1</sup> The AAO notes that the applicant has a 2004 conviction for domestic violence, 8 Arizona Revised Statutes § 13-2904.A.1. The AAO will not, however, consider whether the applicant's conviction bars his admission to the United States under section 212(a)(2)(A)(i)(I) of the Act. Even if established as a crime involving moral turpitude, the conviction would fall under the petty offense exception of section 212(a)(2)(A)(ii)(II) of the Act.

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. Therefore, in the present case, hardship to the applicant or his children can be considered only insofar as it results in hardship to his spouse, the only 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-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, 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

We now turn to a consideration of the record on motion and the evidence submitted to establish extreme hardship.

In dismissing the applicant's appeal on March 9, 2010, the AAO noted the applicant's spouse's claim that she had had to undergo psychological counseling as a result of the stress created by her separation from the applicant, but found the record to lack any medical evidence that she had been diagnosed with depression or was receiving treatment. On motion, the applicant submits documentation relating to his spouse's mental health, including statements from counsel and the applicant's spouse, and a psychological evaluation prepared by psychologist [REDACTED]. He also submits birth certificates for two children born to him and his spouse subsequent to the filing of the appeal.

In her statement, the applicant's spouse contends that she attempted to obtain a letter from [REDACTED] the medical doctor and psychologist who treated her in May 2007, but that he refused to provide one or to give her a copy of her medical file. In his statement and the addendum to the Form I-290B, counsel indicates that he received a telephone call from [REDACTED] concerning the information requested by the applicant's spouse, but that he never received a report from [REDACTED] and, therefore, turned to [REDACTED] for the submitted psychological evaluation.

In her evaluation, [REDACTED] indicates that her findings are based on her March 29, 2010 interview of the applicant's spouse, as well as the results of the two standardized tests, the Beck Depression Inventory-II and the Beck Anxiety Inventory, she administered. [REDACTED] states that the applicant's reported numerous depressive symptoms, including difficulty sleeping, overeating and a weight gain of approximately 40 pounds, social withdrawal, nervousness and hopelessness, and concludes that she is trying to manage an "overwhelming amount of stress" for someone her age. [REDACTED] identifies the causes of the applicant's spouse's stress as being the applicant's absence,

the need to support her three children and working full-time. She finds the applicant's spouse to be suffering from Single Depressive Disorder, Generalized.

also reports that during her interview, the applicant's spouse stated that she is worried about the applicant's safety in Mexico because of the high level of violence in the community in which he lives. The AAO notes that the U.S. Department of State has issued a travel warning for Mexico, last updated on February 8, 2012, which warns U.S. citizens of the significant increase in drug-related violence in Mexico and advises against travel to certain areas and regions, including the State of Chihuahua, which is where the applicant was born and now resides, and where his parents live.

Having reviewed the record, we acknowledge that the applicant's spouse is experiencing significant emotional hardship as a result of her separation from the applicant and that she has the added concern of the applicant's safety in Chihuahua, Mexico, currently one of the country's most violent regions. We also note that she is a single parent of three young children, two of whom do not yet attend school. When the applicant's emotional hardship; her specific concerns about the applicant's safety in Mexico; her responsibilities as a single parent for three young children, two of whom are not yet five-years-old; and the hardships normally created by the separation of a family as a result of exclusion or removal are considered in the aggregate, the AAO concludes that the applicant has established that his spouse would experience extreme hardship if the waiver application is denied and she remains in the United States.

On motion, counsel states that although the applicant's spouse attempted to live in Mexico with the applicant, she found she was unable to do so because of the violence in Mexico and the fact that her oldest daughter speaks English and had difficulty in school. also reports that the applicant's spouse indicated to her during their interview that she had tried unsuccessfully to live in Mexico, but had found the country to be "a different place and difficult financially" and returned to the United States. The applicant's spouse, also notes, had never been separated from her mother and was very homesick. further states that the applicant's spouse informed her that she would not return to Mexico because of the violence in the applicant's community.

In a statement originally submitted on appeal, the applicant's spouse asserts that her family ties are to the United States and that given her family responsibilities, it would be impossible for her to relocate to Mexico. She asserts that her mother suffers from depression and other medical conditions, and that she is responsible for seeing that her mother keeps her doctors' appointments and takes her medication.

As previously discussed, the record indicates that the applicant is residing in the State of Chihuahua, Mexico, where he was born and where his parents continue to live. Accordingly, the AAO finds it reasonable to conclude that the applicant's spouse and his three young children would also reside in Chihuahua if they relocated to Mexico. We also note that security conditions in Chihuahua are such that the U.S. State Department has specifically advised U.S. citizens against traveling there in its travel warning for Mexico, last updated on February 8, 2012. We also observe that the record

documents that the applicant's mother is suffering from various medical conditions, including hypertension, anxiety and depression.

In reaching a decision concerning the hardship that the applicant would experience if she joined the applicant in Mexico, we have taken note of the fact that the applicant was born in and has lived her entire life in the United States, that her family is in the United States, that her mother has both physical and mental health issues, and that she would be relocating with three small children to an area that is experiencing some of the highest levels of drug violence in Mexico. When these specific hardship factors and the difficulties and disruptions created by moving to a new and unfamiliar country are considered in the aggregate, the AAO finds the applicant to have established that his spouse would experience extreme hardship if she relocated to Mexico.

As the applicant has established that a qualifying relative would experience extreme hardship upon relocation and separation, the AAO will now consider whether the applicant warrants a waiver 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-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 AAO finds that the unfavorable factors in this case include the applicant's unlawful presence in the United States for which he now seeks a waiver, his entry without inspection, his unauthorized employment, his 2003 conviction for driving under the influence, and a 2004 conviction for domestic violence, which also involved alcohol abuse and appears to have involved a male relative. The favorable factors in this case include the applicant's U.S. citizen spouse and children, the extreme hardship that would be created for the applicant's spouse if the waiver application is denied, the applicant's mother-in-law's health, the applicant's participation in an Alcoholics Anonymous program in Mexico, and the applicant's compliance with the requirements of section 212(g) of the Act, which waived his 212(a)(1)(A)(iii) inadmissibility based on his past alcohol abuse. Although the applicant's violations of immigration law and his alcohol-related convictions are serious and cannot be condoned, the favorable factors in this case outweigh the negative factors. Therefore, favorable discretion will be exercised.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, AAO will withdraw our prior decision. The application will be approved.

**ORDER:** The motion is granted. The AAO's prior decision is withdrawn. The application will be approved.