U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

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DATE: JUN 06 2012 Office: MEXICO CITY, MEXICO FILE: [redacted]

IN RE: Applicant: J[redacted]

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) and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States by fraud or willful misrepresentation of a material fact and 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 and seeking readmission within ten years of his last departure from the United States. The applicant's spouse and three children are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated February 10, 2010.

On appeal, the applicant states that documentation of hardship is being presented. *Form I-290B Attachment*, dated March 8, 2010.

The record includes, but is not limited to, statements from the applicant's spouse and daughter, financial records, medical records, a psychosocial and treatment review for the applicant's daughter, educational records, documents in Spanish and country conditions information.[1] The entire record was reviewed and considered, other than the documents in Spanish, in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection on August 12, 1988; he filed an asylum application on February 21, 1995; he was referred to the immigration court on March 7, 1995; he was found by the immigration judge to have abandoned his asylum, withholding of deportation and suspension of deportation applications on September 11, 1995; he was granted voluntary departure on September 11, 1995; he was ordered to depart the United States by October 13, 1995; he filed a motion to reopen his deportation proceedings on November 2, 1995, which was denied by the immigration judge on November 21, 1995; he appealed to the Board of Immigration Appeals (BIA) and the appeal was dismissed on November 30, 1999; he filed a motion to reopen and remand with the BIA on September 29, 2005; his motion was denied on November 29, 2005; he filed a petition for review with the Ninth Circuit Court of Appeals on January 4, 2006; the petition was denied in part and dismissed in part on May 25, 2007; he was removed to Mexico on October 18, 2007; he sought to procure admission to the United States on October 29, 2007 by presenting a Form I-551 not lawfully issued to him; and he was expeditiously removed. The record includes evidence that the applicant was granted employment authorization from July 23, 1996 until July 22, 1997 and from April 19, 2001 until April 11, 2003.

[1] The AAO notes the documents in Spanish, but will consider them only to the extent that they are accompanied by English-language translations, as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The applicant accrued over one year of unlawful presence. As such, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his October 18, 2007 departure from the United States. Based on his attempt to enter the United States with a Form I-551 issued to another individual, he also inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States by willful misrepresentation of a material fact.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
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> (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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.
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> . . . .
>
> (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.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States

> of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) 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 his children can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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,* 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's spouse states that the applicant is living in Tijuana; all of their family is in the United States; her older son's special education classes are in the United States; and mental health treatment for her children would be unaffordable in Mexico. The applicant has included several articles on crime, safety issues and violence in Tijuana. The AAO also notes the February 8, 2012 Department of State Travel Warning for Mexico which details general safety issues and specifically mentions safety issues in Tijuana. It states, in pertinent part:

> Baja California (north): Tijuana is a major city/travel destination in the Northern portion of Baja California -see attached map to identify its exact location: You should exercise caution in the northern state of Baja California, particularly at night. Targeted TCO assassinations continue to take place in Baja California. Turf battles between criminal groups proliferated and resulted in numerous assassinations in areas of Tijuana frequented by U.S. citizens. Shooting incidents, in which innocent bystanders have been injured, have occurred during daylight hours throughout the city. In one such incident, a U.S. citizen was shot and seriously wounded. According to the Government of Mexico, as of August 2011, the city's murder rate was approximately 20 per 100,000. During 2011, 34 U.S. citizens were the victims of homicide in the state. In the majority of these cases, the killings appeared to be related to narcotics trafficking.

The record reflects that the applicant's 15-year-old son has been diagnosed with sleep apnea, his 12-year-old son has a heart murmur, and his spouse has been prescribed medication for asthma, insomnia and anxiety. The record further reflects that the applicant's 15-year-old son has an individualized education program due to a learning disability, "which cannot be explained by intellectual, sensory or other health factors." *Multidisciplinary Evaluation Team Report*, dated October 18, 2008.

The record reflects that the applicant's spouse has family ties to the United States. She has some medical issues and her 15-year-old son suffers from sleep apnea and a serious learning disability. Her younger son has been diagnosed with a heart murmur. The record reflects that the applicant's spouse has legitimate safety concerns related to residing in Tijuana.

Considering the applicant's spouse's lack of ties to Mexico; the impact on her of relocating to Mexico with three children, each of whom has health problems and one of whom has an unexplained and serious learning disability; the conditions in Tijuana; and the normal disruptions and difficulties that routinely result from relocation, the AAO finds that the applicant's spouse would suffer extreme hardship upon relocation to Mexico.

The applicant's spouses states that she owes a lot of money on credit cards; she has three children to take care of and she does not want to lose her house; she does not have any more money; and her children are not well psychologically.

The applicant's spouse states that she met the applicant in 1992; she and the children have never been apart from the applicant; she had to close down her and the applicant's video store as she could not work at her job and also run the business; she was neglecting her children and they needed her more than ever; she has taken medication for depression; she had to change her work schedule to 4:00 AM to 12:30 PM so she could be home for her children; her daughter has become quiet, has lost a lot or weight and her grades have gone down due to the applicant's situation; her older son has a learning disability; her younger son's grades have also gone down due to the applicant's situation; and her children are seeing a psychiatrist. As previously mentioned, the applicant's spouse has been prescribed medication for asthma, insomnia and anxiety.

The applicant's daughter states that her school grades have dropped since the applicant was removed from the United States; she has no time for herself, as she has to help care for her brothers; and that her family does not have much money in the applicant's absence.

The record includes numerous bills for the applicant's spouse. Her 2008 and 2009 tax returns reflect income of approximately $23,000. The applicant's 2007 tax return reflects an income of approximately $21,000. The record reflects that the applicant and his spouse have a mortgage with a balance of approximately $195,000.

The applicant's daughter's high school supervisor details the emotional difficulty that the applicant's daughter is experiencing without the applicant. Statements from her math and band teachers attest to the decline in her academic performance and the strain she is under. The record also includes a psychosocial assessment and a 30-day psychosocial and treatment review for the applicant's daughter. These documents reflect that she has had severe melancholy, weight loss, and social isolation, and has been diagnosed with depression and post-traumatic stress disorder. Statements from the applicant's son's teachers also indicate that they are experiencing emotional difficulties at school in the applicant's absence.

The record reflects that the applicant's spouse is experiencing significant emotional and medical issues, and that she is raising three children on her own, each of whom exhibit emotional and/or physical problems. The record reflects that the applicant's spouse is experiencing financial issues as well. Considering the hardship factors presented, and the normal results of separation, the AAO finds that the applicant's spouse would suffer extreme hardship upon remaining in the United States.

In *Matter of Mendez-Moralez,* 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, "[B]alance 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, unauthorized period of stay, unauthorized employment, his failure to comply with a grant of voluntary departure and subsequent removal order, and his attempt to enter the United States with a Form I-551 not issued to him.

The favorable factors are the applicant's U.S. citizen spouse and children, the extreme hardship to the applicant's spouse if the waiver application is denied, his children's physical and mental health issues, the educational certificates awarded to the applicant, the absence of a criminal record, and the statements of support attesting to the applicant's character and his dedication to his family.

The AAO finds that the immigration violations committed by the applicant are serious in nature; nevertheless, when taken together, we conclude that 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) and section 212(i) 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 appeal will be sustained and the waiver application will be approved.

The AAO notes that the applicant is inadmissible under section 212(a)(9)(A) of the Act due to his prior removals and he needs an approved Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, to overcome his section 212(a)(9)(A) inadmissibility.

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