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



**U.S. Citizenship
and Immigration
Services**

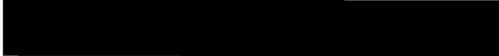


H6

Date: MAR 06 2012

Office: CIUDAD JUAREZ

File: 

IN RE: 

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,


for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, 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)(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 her last departure from the United States. The applicant is married to a U.S. citizen and has one U.S. citizen child. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

In a decision, dated September 11, 2009, the field office director found that the applicant had failed to provide sufficient evidence to establish extreme hardship to her qualifying relative as a result of her inadmissibility and that she did not warrant the favorable exercise of discretion.

In a brief on appeal, counsel states that field office director failed to adjudicate the applicant's waiver application in accordance with U.S. Citizenship and Immigration Services' (USCIS) policy regarding cases involving battered spouses and children. Counsel states that the applicant's waiver application should have been reviewed within the context of the applicant and her current spouse having been abused by her former spouse, who lives in Mexico. Counsel cites to a USCIS internal memorandum entitled, "*Extreme Hardship' and Documentary Requirements Involving Battered Spouses and Children*", dated October 16, 1998, to support his assertion.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

The record indicates that the applicant entered the United States without inspection in April 2005 and remained in the United States until August 2008. Therefore, the applicant accrued unlawful presence from April 2005, until her departure in August 2008. Thus, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 and her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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, 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.

The record of hardship includes: counsel’s brief, a statement from the applicant’s spouse; a statement from the applicant’s daughter; statements from the applicant’s parents, other family members/friends, and the applicant’s pastor; financial documents, medical documents, and country condition information for Mexico.

The AAO notes that a statement from the applicant’s family friend was submitted in the Spanish language with no English translation. Because the applicant failed to submit a certified translation of the statement, the AAO cannot determine whether the evidence supports the applicant’s claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Counsel asserts that the field office director erred when he failed to consider the facts surrounding the applicant’s violent ex-boyfriend and the abuse she and her family suffered as a result of this boyfriend in the context of a Citizenship and Immigration Services Memorandum entitled, “*Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children*.” Counsel states that the field office director failed to consider whether Mexico had laws to protect victims of abuse;

whether relatives or friends of the abuser would be present in country and perpetuate the abuse given the lack of protective laws against it; the need for support services that may not be available in the home country; and the potential loss of access to the U.S. judicial system and the enforcement of any protection orders.

The AAO notes that the memorandum counsel cited to in his brief was meant to apply to self-petitioner cases under the Violence Against Women's Act (Form I-360) where the abuser is a U.S. citizen or lawful permanent resident. However, the AAO will review the applicant's case in light of these considerations and with sensitivity to the special circumstances surrounding a case involving abuse.

The applicant's spouse claims extreme emotional hardship as a result of having the applicant and his children in Mexico, where he claims that they are at risk of abuse from the father of the applicant's first child. The record indicates that the applicant was in an abusive relationship with the father of her first child, who not only was abusive towards her, but also abusive to her current spouse and other family members. The applicant claims that the police in Mexico were notified of the abuse, but did not take any action to stop or prevent it. The applicant claims extreme emotional hardship as a result of having to relocate to Mexico where he would be at risk for abuse by the applicant's former boyfriend and where he would not be able to see his two children from a previous relationship. He states that his ex-wife will not allow their children to travel to Mexico because of the U.S. State Department travel alerts for Mexico.

The applicant's spouse also claims extreme financial hardship as a result of the applicant's inadmissibility as he would have to pay for childcare for his two children with the applicant and would not be able to meet all of his other financial obligations including child support for his other two children from a previous relationship.

The record establishes that the applicant's spouse has two children from a previous marriage who he has joint custody of and for whom he pays child support. The record also includes a statement from other family members or family friends who corroborate the circumstances surrounding the applicant's entry into the United States and the abuse she suffered from her former spouse. In addition, the applicant submits a U.S. State Department travel warning for Mexico. The AAO notes that the current U.S. State Department travel warning for Mexico, dated February 8, 2012, states that Chihuahua, the applicant's home state, has been experiencing narcotics-related violence and U.S. citizens should defer any non-essential travel to the state. Furthermore, the 2010 U.S. State Department Human Rights Report for Mexico states, in regards to domestic violence that Mexican federal law prohibits domestic violence, however, sentences are often lenient and incidents under reported. Similarly, the report states that state-level laws sanctioning domestic violence are weak with seven states not criminalizing it and 15 states punishing it only when it is a repeated offense. Thus, the AAO finds that the applicant's spouse's fears regarding violence in Mexico and the authorities unwillingness to prosecute domestic abuse to be reasonable.

The AAO finds that the applicant's spouse has established that he would suffer extreme hardship as a result of the applicant's inadmissibility. The applicant is suffering extreme emotional hardship as a

result of being separated from the applicant and having the applicant and his children living in a part of Mexico that is experiencing narcotics-related violence and where law enforcement would not protect them from the applicant's first child's abusive father. The AAO finds that the applicant's spouse would suffer extreme emotional hardship as a result of relocation for the same reasons related to fear of violence coupled with relocation separating him from his other children for whom he has joint custody and pays child support.

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, "[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 illegal entry into the United States and her unlawful presence in the United States. The AAO notes that a mitigating circumstance of the applicant's illegal entry was her fleeing from an abusive relationship.

The favorable factors in the present case are the extreme hardship to the applicant's spouse and the hardship to her children if she is not granted a waiver of inadmissibility, the lack of any criminal record in the United States, and as evidenced by letters in the record, the applicant's attributes as a good friend, mother, and community member.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the

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present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.