

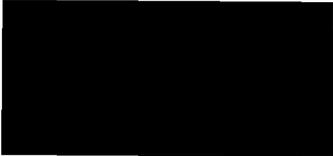
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

PUBLIC COPY



H6

Date: **MAR 14 2012**

Office: 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, 8 U.S.C. § 1182(a)(9)(B)(v)

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

P

Perry Rhew
Chief, Administrative Appeals Office

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

The record establishes that the applicant is a native and citizen of Mexico who entered the United States without authorization in July 2004 and did not depart until July 2008. The applicant was thus 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. The applicant does not contest the field office director's finding of inadmissibility. Rather, she seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children, born in 2005 and 2006.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 22, 2009.

In support of the appeal, the applicant's spouse submits the following: an affidavit, dated October 15, 2009; a copy of the applicant's spouse's U.S. passport; medical documentation pertaining to the applicant and her family; financial documentation; copies of family photographs; evidence of remittances made by the applicant's spouse to his family in Mexico; and confirmation of the applicant's spouse's unemployment. In addition, on November 7, 2011, the AAO received a letter from the applicant's spouse's treating physician outlining a serious injury sustained by the applicant's spouse and its implications. *Letter from* [REDACTED] [REDACTED] dated October 7, 2011. The entire record was reviewed and considered in rendering this decision.

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

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 Attorney General (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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the U.S. citizen children can be considered only insofar as it results in hardship to a 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, 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 applicant’s U.S. citizen spouse contends that he will suffer emotional and financial hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility. In a declaration the applicant’s spouse explains that he has been separated from his wife and two children for over a year and the separation has caused him emotional hardship. He notes that he is sad and lonely and he worries that his children think he has abandoned them. In addition, the applicant’s spouse explains that he was hospitalized in October 2009 as a result of pneumonia and without his wife and children by his side, he was lonely and felt that nobody was there to take care of him. Moreover, the applicant’s spouse details that he was laid off in October 2008 and is barely able to make ends meet. He documents that numerous collection agencies are trying to obtain payment from him but as a result of having to support his wife and children in Mexico, he is unable to fulfill his financial obligations and he is unable to afford to travel to Mexico regularly to visit his family. Further, the applicant’s spouse explains that his son has severe allergies and he is worried that if he has an allergic reaction while in Mexico, he will be unable to obtain immediate and affordable treatment by medical professionals familiar with his condition. *Affidavit of* [REDACTED] [REDACTED] dated October 15, 2009.

Evidence that the applicant’s spouse has been diagnosed with mixed anxiety and depressed mood as a result of his wife’s inadmissibility and has been referred for a psychiatric consult and individual therapy has been submitted. In addition, documentation to corroborate the applicant’s spouse’s statements regarding his son’s severe allergies, the need for him to carry Epipen with him at all times and past hospitalizations as a result of respiratory difficulties has been provided. A letter documenting the applicant’s spouse’s hospitalization in October 2009 has also been submitted. Moreover, a letter has been provided confirming that the applicant’s spouse recently sustained a serious injury to his dominant index finger, needs surgeries and is in need of home assistance until he recovers. Further, extensive documentation establishing that the applicant’s spouse is receiving

unemployment as a result of job termination, has signed a mortgage forbearance agreement to avoid foreclosure and has been sent to numerous collections agencies due to delinquencies has been submitted. Finally, documentation in the record confirms that the applicant's spouse has been financially supporting his family while in Mexico.

Based on a totality of the circumstances, the AAO finds that the hardship the applicant's U.S. citizen spouse is experiencing as a result of his wife's relocation abroad due to her inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship.

With respect to relocating abroad to reside with the applicant based on the denial of the applicant's waiver request, the applicant's spouse documents that he was born in the United States and does not have any ties to Mexico at this time. In addition, as noted above, the applicant's spouse expresses concern that his son may suffer a severe allergic reaction while in Mexico and be unable to obtain appropriate treatment, thereby causing him hardship. *Supra* at 1-2. In a separate affidavit, the applicant outlines the substandard living conditions in Mexico and confirms that the economic situation in Mexico is exasperating. *Affidavit of* [REDACTED]

The record reflects that the applicant's U.S. citizen spouse would be forced to relocate to a country with which he is not familiar. He would have to leave his home, his church and his community and he would be concerned about his and his family's safety and welfare in Mexico, in light of his son's medical issues and his own medical concerns. In addition, the applicant's spouse would not be able to maintain his quality of living due to the substandard economy.¹ It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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).

¹ As noted by the U.S. Department of State,

Poverty is widespread (around 44% of the population lives below the poverty line), and high rates of economic growth are needed to create legitimate economic opportunities for new entrants to the work force.

In evaluating whether . . . 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 favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to remain in Mexico, regardless of whether they accompanied the applicant or stayed in the United States, community ties, home ownership, the applicant's apparent lack of a criminal record, support letters from friends and family, church membership and the applicant's child's medical condition. The unfavorable factors in this matter are the applicant's entry without authorization and periods of unauthorized stay in the United States

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

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