

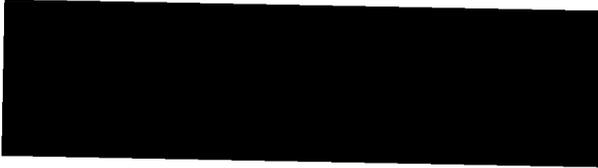
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



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



H6

DATE: MAR 28 2012 Office: MEXICO CITY, MEXICO

FILE: [REDACTED]

IN RE: [REDACTED]

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,

Handwritten signature of Perry Rhew in cursive.

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and a 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 admission within 10 years of her last departure. The applicant is the spouse of a U.S. citizen. She seeks a waiver under 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.

The Field Office Director (FOD) concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated October 7, 2009.

On appeal, the applicant's spouse asserts that he will experience extreme hardship if the applicant's waiver is denied, and submits new evidence for consideration. *See the statement of the applicant's spouse*, dated October 21, 2009.

The record includes, but is not limited to, the following evidence: statements from the applicant's spouse; copies of medical records, including medical and psychological evaluations of the applicant's spouse; copies of financial documents and bills; documents to demonstrate relationships; school documents for the applicant's children; character statements for the applicant and her spouse; copies of photographs; information on Mexico; and documents in Spanish. The entire record was reviewed and all relevant evidence, with the exception of the Spanish-language documents, was considered in reaching a decision on the appeal. *See* 8 C.F.R. § 103.2(b)(3).

Section 212(a)(9)(B) states 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

The record reflects that the applicant entered the United States in February 2001 without inspection and remained in the United States until December 2001 at which time she voluntarily departed the United States. In January 2002, the applicant reentered the United States without inspection and departed the United States in August 2008. Based on the applicant's history, the AAO finds that the applicant accrued over one year of unlawful presence. As the applicant accrued unlawful presence of more than one year after her second unlawful entry and is seeking admission within 10 years of her 2008 departure, she is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility.

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 or other family members 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).

In the present case, the record reflects that the applicant is married to a U.S. citizen. The applicant's spouse meets the definition of a qualifying relative. The applicant's children are not qualifying relatives for purposes of the waiver sought and, therefore, any hardship they might experience as a result of the applicant's inadmissibility will be considered only to the extent it results in hardship to the applicant's spouse.

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 BIA 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, 631-32 (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, "[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., In re 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, the applicant's spouse states that the separation from the applicant is causing him extreme emotional and financial hardship. He states that since his wife and children moved to Mexico, he lost his appetite, is unable to sleep, and his physical and emotional symptoms adversely affect his work. He states that he is diagnosed with stress, depression, anxiety, hypertension, diabetes, high cholesterol, and heartburn, and is taking medications because he needs to sleep. The applicant's spouse also states that it has been financially difficult for him to maintain two households, one in Mexico and one in the United States. The record also indicates that the applicant's spouse pays child support for two of his children from his first marriage. The record contains evidence of money transfers that the applicant's spouse has made for the applicant; a monthly child support billing statement in the amount of \$493; and copies of his pay stubs. The applicant's spouse also states that he and the applicant have a newborn baby girl whom he has not seen since her birth due to his financial difficulties. The applicant's spouse further states that he is also concerned about the applicant and his children's safety in Mexico.

In support of his medical and psychological hardship, the applicant submitted medical and psychological evaluations, and copies of medication prescriptions and laboratory results. According to [REDACTED] an authorized civil surgeon, the applicant's spouse is being treated for hypertension, diabetes, and hyperlipidemia, and these conditions may worsen "due to stress, irregular meals and insomnia." According to [REDACTED], the applicant's spouse appears nervous, irritable, and restless. [REDACTED] report indicates that the applicant's spouse is having difficulty performing his duties in a highly technical field due to his decreased concentration, lack of sleep, worries, headaches, and fatigue. [REDACTED] October 17, 2009 evaluation also indicates that the applicant's spouse has an increased reliance on alcohol and tobacco to reduce his stress.

In her October 20, 2009 psychological evaluation, [REDACTED], licensed marriage and family therapist, describes the applicant's spouse as nervous, fearful, tense, and appearing to be in a depressed mood. [REDACTED] evaluation also indicates that the applicant's spouse's previous history of depression and feelings of loneliness and isolation put him at a high risk of emotional decompensation. [REDACTED] states that continued separation from the applicant places the applicant's spouse in a more vulnerable psychological state and will be detrimental to his mental health.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse would experience extreme hardship on separation. In reaching this conclusion, we note the applicant's spouse's deteriorating medical and mental condition. The record contains evidence that stress caused by their separation is negatively affecting the applicant's spouse's medical and mental health. The record indicates that the applicant's spouse has a history of depression and is

experiencing many psychosomatic symptoms since the applicant's departure. The record also indicates that his hypertension, diabetes, and other medical conditions have worsened because of elevated stress. The medical and psychological evaluations indicate that the applicant's spouse is not able to handle stress effectively and the stress caused by separation affects his work performance.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and he relocates to Mexico. The record establishes that the applicant's spouse is being treated in the United States for his medical and mental conditions. The record also establishes that the applicant is gainfully employed in the United States and is under legal obligation to pay child support. The AAO also notes the applicant's spouse's safety concerns in Mexico. The U.S. Department of State (DOS) has issued a travel warning for Mexico, updated on February 8, 2012, which indicates the situation in the state of [REDACTED] as being unpredictable due to violence by transnational criminal organizations. The report indicates that the rising number of kidnappings and disappearances throughout Mexico is also of particular concern. The record also reflects the following concerns about relocating to Mexico: a lack of job opportunities; a lack of quality health care for the applicant's spouse and their children; and a lower quality of available educational options for their children. The AAO concludes that the applicant's spouse would experience extreme hardship if he relocates to Mexico.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that her spouse would face extreme hardship if the applicant's waiver request is denied. The applicant has established statutory eligibility for a waiver of his inadmissibility under section 212(a)(9)(v) of the Act.

In that the applicant has established that the bar to her admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 . . . 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, 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 are the applicant's entries without inspection and unlawful presence in the United States for which she now seeks a waiver. The mitigating factors include the applicant's U.S. citizen spouse and children; the extreme hardship to her spouse if the waiver application is denied; and the applicant's spouse's medical and mental conditions.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating 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) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.