

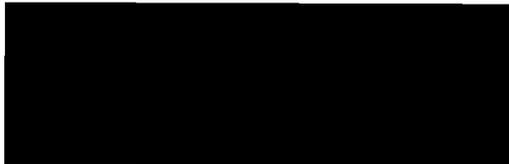
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H6

DATE: MAR 28 2012

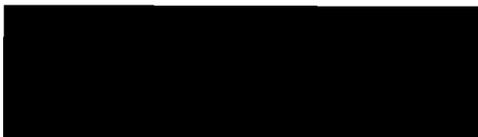
Office: CIUDAD JUAREZ, MEXICO

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act, 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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, 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. *Field Office Director's Decision*, dated August 21, 2009.

On appeal, counsel asserts that the applicant has established extreme hardship to her qualifying relative. *Form I-290B, Notice of Appeal or Motion*, filed on September 23, 2009. Counsel submits additional evidence of hardship.

The record includes, but is not limited to, the following evidence: counsel's briefs; letters and statements from the applicant's spouse; a psychological evaluation of the applicant's spouse; medical statements and records for the applicant's daughter; medical statements relating to the applicant's spouse and his parents; an online medical article; financial documents; and documents in Spanish. The entire record was reviewed and all relevant evidence, with the exception of the Spanish-language documents, 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.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

The record reflects that the applicant entered the United States in April 2002 without inspection. At the time of her entry into the United States, the applicant was 16 years old. She turned 18 years of age on October 14, 2003. The record reflects that the applicant departed the United States in August 2008. Based on the applicant's history, the AAO finds that the applicant accrued unlawful presence from October 15, 2003, the day after her 18th birthday, until her departure in August 2008. As the applicant accrued unlawful presence of more than one year 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.

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 also has a daughter who is a U.S. citizen. The applicant's spouse meets the definition of a

qualifying relative. The applicant's daughter is not a qualifying relative for purposes of the waiver sought and, therefore, any hardship she 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 her inadmissibility.

On appeal, counsel contends that the applicant's spouse is concerned that his daughter who has been diagnosed with Guillian-Barre Syndrome is not getting the medical care she needs or the education that she deserves. Counsel also asserts that the applicant's spouse is concerned about the economy in Mexico and the safety of his wife and daughter in Mexico. Counsel states that the applicant's spouse has remained in the United States in order to earn a living to support his family but that he worries about being unable to protect his own family.

In his statements and letters, the applicant's spouse, [REDACTED] reports that he depends on the applicant's moral and emotional support and advice, that he is being treated for depression, and that he suffers from anxiety, lack of sleep and nervous conditions. [REDACTED] further states that he worries about the safety of his wife and daughter, [REDACTED] and that he is also concerned for his daughter's health as she has been diagnosed with Guillain-Barre Syndrome. He indicates that doctors in Mexico see little improvement in his daughter's condition and he worries that any further delays in her medical treatment may make her condition permanent. [REDACTED] states that his daughter does better with the treatment in the United States. He also asserts that his daughter is extremely attached to her mother and a forced separation from her mother would cause her stress, which might negatively affect her recovery.

[REDACTED] also contends that he is experiencing financial hardship due to his separation from the applicant. He states that because of his depression and inability to concentrate, he has been having difficulty keeping a steady job and that at times he gets so depressed that he has no desire to go to work. He further asserts that it is becoming more difficult for him to support his wife and daughter in Mexico and himself in the United States.

To demonstrate the emotional hardship experienced by the applicant's spouse, the record offers a September 10, 2008 letter from [REDACTED] treating physician since April 2008, who states that [REDACTED] has been diagnosed with severe depression and that his condition is affecting his daily activities. The record also includes a September 11, 2009 psychological assessment of [REDACTED], who states

that she interviewed the applicant's spouse, reviewed his medical records and administered a cognitive/neurologic screening test, as well as a personality and social-emotional test to him. [REDACTED] observes that [REDACTED] had difficulty putting thoughts together, demonstrated significant cognitive slowing and that his short-term memory was impaired. She further states that, based on her interview and testing results, [REDACTED] has a Major Depressive Disorder that has been exacerbated by his separation from his wife and his daughter. [REDACTED] also notes that because [REDACTED] condition is pre-existing, the severity of each episode he experiences will increase. She further finds that he has no appropriate coping skills for his situation and is extremely socially isolated. [REDACTED] concludes her report by saying that [REDACTED] prognosis is poor and will worsen if his separation from the applicant and his daughter continues.

In support of her daughter's medical condition, the applicant has submitted a statement from [REDACTED] dated September 9, 2009; a statement from [REDACTED] dated September 9, 2009; a statement from [REDACTED] dated March 12, 2009; a letter from [REDACTED] dated February 27, 2009; and a statement from [REDACTED] dated, January 27, 2009. The record also contains copies of notes from the applicant's daughter's January 27, 2009 hospital admission and a report relating to a physical therapy visit, dated April 9, 2009. According to the medical evidence, the applicant's daughter has been diagnosed with Guillen-Barre and is experiencing muscle weakness and mobility problems. In his March 12, 2009 letter, [REDACTED] doctor in the United States, states that [REDACTED] has ascending paralysis of unknown cause. He states that this condition may have life-long residual muscle weakness for some patients and that the applicant's daughter will require extensive and prolonged physical and occupational therapy in order to preserve her muscles. He further indicates that the family involvement in her care and rehabilitation is medically necessary. The January 27, 2009 letter from [REDACTED] also indicates that [REDACTED] would strongly benefit from her mother's presence and assistance with her follow-up care.

The record contains a letter from one of applicant's husband's employers indicating the termination of his employment on July 17, 2009. The applicant submits copies of receipts for money transfers that [REDACTED] has sent her. The record indicates that the applicant's spouse resides with his parents. However, a letter from the applicant's father-in-law states that his son pays monthly rent and half of all utilities. The applicant has also submitted documentation to demonstrate the cost of [REDACTED] air fare for his trips to Mexico. The record includes collection letters addressed to [REDACTED] from two different companies.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and he remains in the United States. In reaching this conclusion, we have noted that the applicant's spouse has been diagnosed with severe depression and is having difficulty coping with separation from the applicant and his daughter. We also note the stress that has resulted from his daughter's medical condition. The AAO has also considered the financial hardship that the applicant's spouse is experiencing due to having to provide for two households and his inability to keep a steady employment due to his mental and emotional distress. While we do not have enough evidence to establish the extent of

the financial hardship being experienced by the applicant's spouse, we note that separation has resulted in some degree of financial hardship. Accordingly, the AAO concludes that when the hardship factors raised by the applicant and the normal hardships created by separation are considered in the aggregate, the applicant's spouse would experience extreme hardship if his separation from the applicant continues.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if he relocates to Mexico. On appeal, counsel states that the applicant's spouse was born and raised in the United States and has strong family ties here. He further asserts that if the applicant's spouse relocates, he would lose the comfort that he receives from his close family relationship and also would suffer severe financial hardship. Counsel states that the applicant and her spouse would find it virtually impossible to obtain similar employment at similar wages in Mexico, and without [REDACTED] financial assistance, his parents could lose their home.

The applicant's spouse states that he is a third-generation American who was born and raised in the United States. He states that he has no family in Mexico, and that he does not speak and write Spanish proficiently and would not be marketable in Mexico. He states that he would not be able to obtain comparable employment in Mexico and, therefore, must remain in the United States if he is to maintain his family's income. He further states that he has strong family ties in the United States and his parents depend on him financially. The applicant's spouse also states that his daughter is receiving inadequate care in Mexico and that he is worried about the violence and crime in Mexico.

[REDACTED] states that doctors in Mexico see little improvement in his daughter's condition and he worries that any further delays in her medical treatment may make her condition permanent. He states that his daughter does better with the treatment in the United States. The record also indicates that [REDACTED] has health insurance coverage in the United States through the [REDACTED]. The record shows that [REDACTED] has been evaluated by a physician in Mexico. In his September 9, 2009 letter, [REDACTED], Brain and Spinal Cord Specialist, states that when he first examined [REDACTED] she had only right hand movement and no movement in the rest of her body; and that she had no muscle reflexes. He further states that [REDACTED] continued therapy at home applied by her mother due to economic problems and showed a little improvement. [REDACTED] states that [REDACTED] must continue with physical therapy and frequent check-ups with her doctor. The psychological evaluation indicates that the applicant's spouse's concerns about his daughter's health care in Mexico have had an impact on him. We note that if the family relocates permanently to Mexico, these concerns would continue. We further note the statement made by [REDACTED] concerning the [REDACTED] inability to cope with stressful situations and that his condition responds better in a structured family environment where stress and changes are minimized.

The AAO acknowledges that the applicant's spouse's lack of language skills would have a significant negative impact on his ability to obtain employment and support his family in Mexico. The record indicates that the applicant and her daughter live in [REDACTED]. It is noted

that the U.S. Department of State has issued a travel warning, last updated on February 8, 2012, which indicates that numerous incidents of violence have occurred in the state of Michoacan, the home of Mexico's most dangerous transnational criminal organization, [REDACTED]

We have considered the hardship factors in the record and find that when considered in the aggregate with the hardships routinely created by relocation, the applicant has demonstrated 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 factor in the present case is the applicant's 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 child; the extreme hardship to her spouse if the waiver application is denied; her daughter's medical condition; her father-in-law's and mother-in-law's health; the absence of a criminal record; and the applicant's and her spouse's family ties to the United States.

The AAO finds that the immigration violation committed by the applicant was serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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.