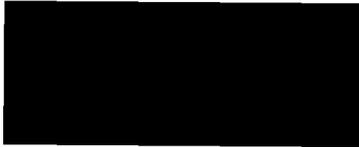


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



H6

DATE: MAR 28 2012 Office: CIUDAD JUAREZ, MEXICO

FILE: [REDACTED]

IN RE: Applicant: [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)

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, appearing to read "Perry Rhew".  
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 his last departure from the United States. The applicant's spouse and three children are U.S. citizens and he seeks a waiver of inadmissibility in order to reside in the United States.

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 November 25, 2009.

On appeal, counsel asserts that the applicant's spouse would experience extreme hardship if the waiver application is denied. *Brief in Support of Appeal*, dated December 22, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, letters of support, medical and financial records, and country conditions information on Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in August 2001, and departed the United States in August 2008. The applicant accrued unlawful presence during this entire period of time. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his August 2008 departure from the United States.

Section 212(a)(9)(B) 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-

....

- (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 [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 section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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.

Counsel states that the applicant’s spouse’s parents, four siblings, uncles, aunts and cousins are U.S. citizens who live in San Diego; her family provides assistance such as babysitting and emotional support; her grandparents reside in Mexico, but she has little contact with them; she has no ties to Mexico; she cannot fluently read or write Spanish; her older daughter suffers from asthma, receives California’s medical insurance and would have to pay cash for the treatments in Mexico; pollution in Mexico could make the asthma condition worse; she would not be able to return to college to finish her degree; the applicant’s spouse would face constant financial and emotional hardship in Mexico; the applicant only earns \$150 per week in Mexico; the State Department has issued warnings of violence in Mexico; and Mexico is a poor country with little opportunity.

The applicant’s spouse states that she and the children are close with her family; she will not be able to find a job with a decent salary in Mexico; she has not lived in Mexico since she was eight; her children would lose educational opportunities; the homes in Mexico are not safe; she will not be able to afford medical care for her and her children; there is no indoor plumbing or hot water in her hometown; the town she is from is very poor; she is afraid to live in Mexico due to safety reasons; she does not have any friends in Mexico; her Spanish is not too good; and her children are not bilingual.

The applicant’s older daughter’s physician states in a November 10, 2008 letter that she was diagnosed with eczema and asthma and she requires bronchodilators and preventative medication.

He states that she was hospitalized in October 2008. The record reflects that the U.S. Department of State issued a travel warning for Mexico, dated February 8, 2012, although the record is not clear where the applicant's spouse would reside. The record includes country conditions information on Mexico detailing general safety and economic issues.

The record reflects that the applicant's spouse's family ties are in the United States and she does not have ties to Mexico, other than her grandparents. The record reflects that there are general safety issues in Mexico. In addition, she would have to raise three U.S. citizen children in Mexico; her older daughter has eczema and asthma; and her children would lose educational opportunities in the United States. Considering these factors, and the normal results of relocation, the AAO finds that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico.

Counsel states that the applicant was the main source of income and 50% of the emotional and child-care support for the family; the applicant is temporarily living in the violent city of Tijuana in order to be near his spouse and children; and the stress of separation has caused her older daughter's asthma to become worse and she went to the emergency room for treatment.

The applicant's spouse states that the applicant is a perfect father and husband; she gets depressed due to separation from the applicant; she is afraid of psychological effects on her children; he provided financial support; the applicant helped out with household chores and caring for the children; she now has a full-time job which has resulted in her losing quality time with the children; she is struggling to pay her bills; her children cry due to missing the applicant; she cannot make their school events anymore; her expenses exceed her monthly income by \$800; she limits her visits to Tijuana due to the rise of kidnapping and crime there; and she is afraid that her children may be kidnapped in Tijuana. The record includes a psychological evaluation of the applicant's spouse, dated December 16, 2009, which reflects that she is suffering from Major Depressive Disorder with accompanying features of Anxiety. Several family and friends of the applicant's spouse have detailed the emotional difficulty that she is experiencing.

The applicant's older daughter's physician states that a prolonged separation from her father could make her vulnerable to more frequent and severe asthma exacerbations. The applicant's spouse's employer states, in a December 18, 2009, letter that her job performance has decreased due to lack of concentration and missing work to care for her children, and that her job is in jeopardy as a result. The record includes several credit card statements for the applicant's spouse.

The Mexico travel warning states, "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, an U.S. citizen was shot and seriously wounded."

The record reflects that the applicant's spouse has significant emotional difficulties; she is raising three children on her own; visiting the applicant entails travel to a dangerous part of Mexico; her job performance is decreasing; and her older daughter has medical issues. Considering the hardship

factors mentioned, and the normal results of separation, the AAO finds that the applicant's spouse would suffer extreme hardship if she remained in the United States.

In *Matter of Mendez-Morales*, 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 two entries without inspection, one border patrol arrest, unlawful presence and unauthorized employment.

The favorable factors are the applicant's U.S. citizen spouse and children, lack of a criminal record and extreme hardship to his spouse.

The AAO finds that the immigration violations committed by the applicant are serious in nature; nevertheless, when taken together, we find the favorable factors in the present case outweigh the adverse factors, 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 rests with the applicant. *See* section 291 of the Act.

Here, the applicant has now met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

**ORDER:** The appeal is sustained.