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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: MEXICO CITY, 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, Mexico City, 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, two children and two stepchildren 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 October 20, 2009.

On appeal, counsel asserts that the applicant's spouse and children would experience extreme hardship if he remained outside of the United States for ten years. *Form I-290B*, dated November 19, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, school letters, medical records and country conditions information. 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 February 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 two older children would not have the same academic opportunities in Mexico, as most children without money work to help their family; one of the daughters has threatened to emancipate herself so that she can finish her education in the United States; the school system in Mexico is inadequate; the applicant’s spouse is worried about the rise in crime and violence in Mexico; and she fears being unable to support her family in Mexico. The record includes information on minimum wages and human rights conditions in Mexico. The U.S. Department of State Travel Warning for Mexico, dated February 8, 2012, details numerous and serious security and safety issues in Mexico. However, the record does not reflect that the applicant’s spouse would reside in an area noted in the Travel Warning as being particularly dangerous.

The applicant’s spouse states that she has lived in Utah since the age of 10; her first child is in high school and is on the basketball team; her second child is in middle school and is a good student; her older children will suffer as they watch their dreams disappear; they will not earn enough to provide for their children’s education, health care and basic needs; she was a domestic abuse victim and now works with the [REDACTED] to help other abuse victims; she experienced isolation as an abuse victim and she would again suffer isolation in Mexico; she speaks Spanish but does not write it well; she does not have any family in Guadalajara; and her second daughter has asthma. The record contains letters from the children’s physician which state that the second child has asthma and that the third child has had wheezing episodes in the past and that she may have asthma but has not been diagnosed with it. The record includes articles on student drop outs in Mexico and the school system. The

applicant's spouse's second child states she would rather become emancipated and live with friends than move to Mexico; and her life in the United States is too important to leave behind.

The record reflects that the applicant's spouse has resided in the United States since she was ten years old and she does not have family in Guadalajara. In addition, she would be raising three children in Mexico and she would likely be separated from her fourth child. The record reflects some medical issues for her children, one of who would return with her. They would also 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's stepchildren look to him as their father, as their biological father was abusive; the applicant provides for his stepchildren financially and emotionally, attends their extracurricular activities and encourages them to attend college; the applicant's spouse has lost one of her two jobs; the children are struggling without the applicant; the applicant's spouse has been raising four children without the applicant's physical, financial and emotional support; the applicant's stepchildren's grades and attendance have fallen; the applicant's spouse emotional and physical stress increase by seeing her gifted children affected adversely; the family no longer has health insurance; she has trouble performing at her job; her two younger children ask for the applicant; she is suffering from major depressions; and she has a minimum wage job. The record includes a notification to terminate the applicant's spouse's healthcare benefits. The record includes school letters reflecting that the two older children are experiencing problems at school.

The applicant's spouse states that she lives with her four children; her income alone will not allow her to pay for daycare; she had to quit one of her jobs as the applicant is no longer available to help with the kids; the applicant would put the kids to bed, take them to school and take her to work; her children miss the applicant; and she has to take more days off than normally allowed. The record includes evidence that the applicant's spouse's cell phone was suspended due to a high balance.

Progress notes for the applicant's spouse reflect that she meets criteria for major depressive disorder and she is taking medication. The applicant's spouse's therapist states that the absence of the applicant has resulted in severe anxiety and depression and she exhibits symptoms such as insomnia, fatigue and diminished ability to concentrate.

The applicant's spouse's second child states that she has taken more responsibility over her younger siblings since the applicant has been gone; her mother is not home much and works the grave yard shift; a strain has been put on her and she failed five courses; and her life is based on her academic career.

The record reflects that the applicant's spouse is raising four children on her own and she has emotional/psychiatric issues. In addition, she does not have medical insurance and her older children are experiencing difficulty in school. 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-Moralez*, 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 entry without inspection, two border patrol arrests and unlawful presence.

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