

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: OCT 01 2012

Office: MEXICO CITY

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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 Rhey".

Perry Rhey  
Chief, Administrative Appeals Office

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

The record reflects that 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 Act for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his wife and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated October 29, 2010.

On appeal, counsel contends the applicant has established extreme hardship, particularly considering the applicant's wife's mental health, financial hardship, membership in the [REDACTED] and country conditions in Mexico. Counsel submits additional documentation with the appeal.

The record contains, *inter alia*: a letter from the applicant's [REDACTED] letters from [REDACTED] physician and copies of prescriptions; letters from [REDACTED] mother and grandmother; a psychological evaluation from a social worker; a letter from [REDACTED] grandmother's physician; a letter from the couple's child's physician; documentation regarding public assistance; letters from collection agencies; copies of [REDACTED] pay stubs; a copy of the U.S. Department of State's Country Conditions Report for Mexico; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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.

In this case, the record shows, and the applicant does not contest, that he entered the United States in August 2004 without inspection and remained until March 2009. The applicant accrued unlawful presence of over four years. Accordingly, he 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 one year or more and seeking admission to the United States within ten years of his last departure.

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.

In this case, the applicant’s wife, [REDACTED] states that she left her job for Mexico to be with her husband, but that in Mexico she kept getting sick and missed her family. She states she returned to the United States approximately two months later. She states it has been very hard being apart from her husband and that since she returned to the United States, she has been unable to find employment on the reservation where she lives. She states she has insomnia, that she is pregnant, and that she does not want to raise the baby alone.

After a careful review of the record, the AAO finds that the applicant’s wife, [REDACTED] has suffered and will continue to suffer extreme hardship if the applicant’s waiver application were denied. The record contains ample documentation showing that since the applicant’s departure from the United States, [REDACTED] has qualified for public assistance, including Medical Assistance, WIC, and Food Stamps. In addition, the record shows she has received numerous letters from collection agencies and is in arrears with respect to many of her bills, including her rent. Copies of [REDACTED] pay stubs show she works full time and earns \$8 per hour. In addition to the financial hardship, the record also shows [REDACTED] has mental health issues. The record contains a letter from a social worker diagnosing [REDACTED] with Depressive Disorder. According to the social worker, [REDACTED] has had a history of depression since childhood due to alcohol use by her mother, contemplated suicide when she was in high school, and received counseling at that time. The social worker also states that because [REDACTED] is not financially independent, she now lives with her grandmother. A letter from [REDACTED] grandmother states that [REDACTED] has been living with her since returning from Mexico, that [REDACTED] is on Medicaid, and that they are trying to make the best out of her situation. A letter from the grandmother’s physician states that she needs [REDACTED] assistance because she has diabetes, hypertension, hyperlipidemia, low back pain, and sciatic nerve pain to the left leg. Considering these unique circumstances, the AAO finds that if [REDACTED] continues to stay in the United States without her husband, the effect of separation from the applicant goes above

and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Furthermore, relocating to Mexico to avoid separation would be an extreme hardship for [REDACTED]. The AAO recognizes counsel's contentions that [REDACTED] entire family was born in the United States, that she is Native American, that she and her son are members of the [REDACTED] which guarantees them basic health services, and that she does not speak Spanish or know the culture of Mexico. The AAO also acknowledges that [REDACTED] has already tried to relocate to Mexico, but that she ultimately she returned to the United States to be with her family. In addition, the AAO notes that the U.S. Department of State has issued a Travel Warning for parts of Mexico. *U.S. Department of State, Travel Warning, Mexico*, dated February 8, 2012. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if she relocated to Mexico to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the [REDACTED] factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's initial entry without inspection, unlawful presence in the United States, and periods of unlawful employment. The favorable and mitigating factors in the present case include: family ties in the United States including his U.S. citizen wife and child; the extreme hardship to the applicant's wife and child if he were refused admission; a letter of support from [REDACTED] mother and grandmother describing the applicant as a hard worker who takes good care of his wife; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, 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.

**ORDER:** The appeal is sustained.