

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**



tlg

Date: OCT 16 2012

Office: MONTERREY

FILE: 

IN RE:

Applicant: 

APPLICATION:

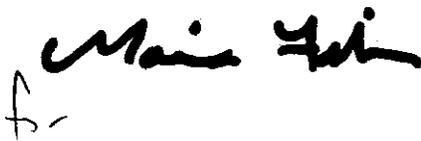
Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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,



Perry Rhew
Chief, Administrative Appeals Office

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

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 again seeking admission within ten years of his last departure from the United States. The applicant stated that he entered the United States without inspection in 2001 and did not depart until January 2010, a period of more than one year. The applicant does not contest the inadmissibility. The applicant is the spouse of a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

In a decision dated November 24, 2010, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated November 24, 2010.

On appeal the applicant submitted a statement of hardship from his U.S. citizen spouse; letters from the school principal and a school counselor for the applicant's son; a letter from the spouse's employer; a letter from the University of Utah School of Medicine with medical documentation for the applicant's daughter; a list medical and utility bills; a rental agreement; a letter from a collection agency; child care invoices; a letter from the applicant's previous employer; photos of the applicant's family; photos of the applicant's house in Mexico; and a non-translated news article about violence in Mexico.

The record also contains previously-submitted letters from the applicant's spouse about the hardship she faces due to separation from the applicant; copies of the marriage certificate for the applicant and his spouse and birth certificates for their two U.S.-born children; receipts for contributions to the applicant's church in the United States; and copies of lease agreements, taxes, insurance statements, utility bills, vehicle registration, and credit union statements..

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.

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. The applicant's spouse is the only qualifying relative in this case. 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).

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 her statement the applicant’s spouse contends she experiences emotional stress as she is currently working two jobs to support the couple’s two children while losing out on her own educational future. She points out, with supporting medical documentation, that the youngest child undergoes ongoing therapy due to “deeply seated hips”, diagnosed in a letter from a medical professional as bilateral hip dysplasia. The applicant’s spouse also notes that she had to visit the emergency room due to her own medical problems for which she needs the support of the applicant. The applicant’s spouse further states that she faces financial hardship without the applicant, submitting a list of bills along with statements plus late notices for medical and utility payments.

A letter from one of the spouse’s employers states, “During the last two years I have seen [REDACTED] work two jobs, got to school, and try and raise her two children alone. The stress, anxiety, and exhaustion show in her face often.” Letters supporting the applicant from the school principal and the spouse’s employer indicate the applicant’s spouse was born in the United States and also suggest she has taken the children to visit the applicant in Mexico and later had to leave them in Mexico with the applicant because she could not work and care for them on her own.

The evidence on the record establishes that the applicant’s spouse would experience extreme hardship were he unable to reside in the United States. The spouse has been caring for two children, including one with ongoing medical concerns, while holding two jobs. Although the applicant submitted no psychological evaluation for the spouse, a statement from the spouse explains the

emotional stress she feels and a letter from one of her employers describes noticeable stress. The record also contains documentation regarding the income of the qualifying spouse, her living and medical expenses, and collection letters for past-due accounts, thereby demonstrating the hardship she faces without the applicant's financial contributions to the family. When considered in the aggregate, the documentation provided regarding the qualifying spouse's emotional and financial hardships establish that the qualifying spouse would suffer extreme hardship if she were to remain in the United States without the applicant.

The applicant's spouse also asserts that if she and the children were to reside in Mexico they would have a lack of family support as her family lives in the United States. She contends living conditions in Mexico are very poor and would be unsanitary for her children. She goes on to point out that crime in Mexico is "out of control", destroying families. The applicant submitted no country condition information other than a non-translated news article about violence in Mexico.

The applicant has demonstrated that his qualifying relative would suffer extreme hardship in the event that she relocated to Mexico to be with the applicant. The applicant's spouse was born in the United States, where her family resides, and indicates having no family in Mexico. She stated in a previously-submitted statement that she had not yet visited Mexico. The applicant's spouse also expressed concern for safety because of violence in Mexico and referred to conditions where the applicant lives as "unsanitary". The AAO notes the Department of State has issued travel warnings for Mexico due to ongoing violence and crime. Although the applicant submitted no country condition information specific to where he resides or to the level of medical care available for his daughter were she to relocate there with the applicant and his spouse, the AAO takes note that the U.S. State Department reports indicate medical care in Mexico is of lower standards in rural areas, which appears to be the environment where the applicant resides. The applicant has documented his daughter has a medical problem that requires ongoing therapy.

As such, the record reflects that the cumulative effect of the qualifying spouse's family ties to the United States, her health and safety concerns, and likely lack of necessary medical access for her child were she to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, his qualifying spouse would suffer extreme hardship if she joined him in Mexico.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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 BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the hardship to the applicant's United States citizen spouse if the applicant is not granted this waiver, a letter from the applicant's previous employer indicating he would be rehired, letters for support from friends in the United States, previous charitable donations, and the passage of time since the applicant's illegal entry into the United States. The unfavorable factors in this matter are the applicant's illegal entry, accrual of unlawful presence in the United States, and a 2004 for arrest for petit larceny.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.