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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**



tlg

[Redacted]

Date: SEP 07 2012

Office: ALBUQUERQUE

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:

[Redacted]

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

Perry Rhew
Chief, Administrative Appeals Office

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

The record establishes that the applicant is a native and citizen of Mexico who entered the United States in 1994 with a Border Crossing Card and remained beyond the period of authorized stay. The applicant departed the United States in 1998 for 3 days and re-entered the United States with a Border Crossing Card and remained beyond the period of authorized stay. In 1999, the applicant again departed the United States and re-entered the United States with a Border Crossing Card in 1999 and remained beyond the period of authorized stay. The applicant did not depart the United States again until 2002 when she traveled to Mexico and re-entered the United States days later. The applicant has not departed the United States since that time. In September 2003, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485).

The applicant accrued unlawful presence from 1999 until her departure in 2002. The applicant was thus 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.¹ The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident spouse and U.S. citizen children.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 18, 2009.

In support of the appeal, counsel for the applicant submits the following: a brief; documentation regarding country conditions in Mexico; and support letters. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9), states in pertinent part:

¹ The AAO notes that the applicant may also be inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or misrepresentation. As noted above, the applicant utilized a Border Crossing Card, most recently in 2002, to resume residence in the United States with her spouse and U.S. citizen children. Had the applicant disclosed her previous stay in the United States, from 1994 to 1998, and the presence of a U.S. citizen child, born in August 1998, she would likely not have been granted the Border Crossing Card in November 1998 and subsequent entries due to her lack of ties to Mexico. Nevertheless, because the applicant is inadmissible under section 212(a)(9)(B) of the Act and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) also satisfies the requirements for a waiver for fraud or willful misrepresentation under section 212(i), the AAO will not determine whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 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...

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 lawful permanent resident spouse is the only qualifying relative in this case. Hardship to the applicant or the children, born in 1998 and 2005, 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).

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-I-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.

The applicant's lawful permanent resident spouse contends that he will suffer emotional and financial hardship were he to remain in the United States while his wife relocates abroad due to her inadmissibility. In a declaration, the applicant's spouse explains that he and the applicant have been together since 1997 and long-term separation would cause him hardship. In addition, the applicant's spouse outlines that he is gainfully employed and the sole financial provider for the family while his wife cares for their two children, but were she to relocate abroad, he would not be able to properly

care for them. Moreover, he notes that his children would experience hardship due to long-term separation from their mother. *Letter from [REDACTED] dated [REDACTED] 2009.* In a separate statement, the applicant details that she is primary caregiver to her young daughters and they need their mother to provide daily love and warmth and comfort and it would be extremely difficult for her husband to continue financially providing for the family if he had to care for his daughters on his own. *Letter from [REDACTED].* Counsel, on appeal, references that the applicant's spouse would experience hardship if his wife relocated to Mexico as he would be anxious and worried for her safety at all times since Mexico, and most notably, Chihuahua, the applicant's home state, is experiencing high levels of violence. *Brief in Support of Appeal.*

In support, a letter has been provided from the applicant's pastor, referencing the critical role the applicant plays in her family's lives and noting the hardships the family would experience, emotionally and spiritually, were the applicant to relocate abroad. *Letter from Reverend [REDACTED] dated [REDACTED], 2010.* In addition, a letter has been provided from the applicant's children's treating physician, outlining the hardships the children, and by extension, the applicant's spouse, would experience were the applicant to relocate abroad as a result of her inadmissibility. *Letter from [REDACTED], M.D., [REDACTED] dated December 25, 2009.* Moreover, evidence establishing the applicant's spouse's role as primary financial provider to the family has been provided. Further, documentation has been provided establishing the financial obligations of the applicant and her spouse. Finally, the AAO notes that the U.S. Department of State has issued a travel warning for Mexico specifically referencing Chihuahua, the applicant's and her spouse's birthplace. The travel warning notes that all non-essential travel to the state of Chihuahua should be deferred, that the situation in Chihuahua is of special concern. *See Travel Warning-Mexico, U.S. Department of State, dated [REDACTED], 2012.*

The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship if he remains in the United States.

With respect to relocating abroad to reside with the applicant as a result of her inadmissibility, *counsel notes that the applicant's spouse has been residing in the United States since 1995 and no longer has significant ties to Mexico.* In addition, counsel explains that the applicant and her family are church members and home owners and the applicant's spouse has been gainfully employed as a Cement Mason Supervisor for over ten years. Moreover, counsel references the applicant's children's strong ties to the United States. Finally, counsel maintains that country conditions in Mexico, and most notably Chihuahua, the applicant's home state, are very dangerous and were the applicant's spouse and children to relocate to Mexico, their safety would be a risk. *Brief in Support of Appeal.*

The record establishes that the applicant's children, most notably their elder daughter, are fully integrated into the United States lifestyle and educational system. The Board of Immigration

Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate them to Mexico would constitute extreme hardship to them, and by extension, to the applicant's spouse, the only qualifying relative in this case. In addition, the record reflects that the applicant's spouse has been living in the United States for over seventeen years and no longer has ties to Mexico. Finally, as noted above, the U.S. Department of State has issued a travel warning for Mexico specifically referencing Chihuahua, the applicant's and her spouse's birthplace. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien 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-Morales, 21 I&N Dec. 296, 301 (BIA 1996). 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 favorable factors in this matter are the extreme hardship the applicant's lawful permanent resident spouse and U.S. citizen children would face if the applicant were to reside in Mexico, regardless of whether they accompanied the applicant or remained in the United States, community ties, the apparent lack of a criminal record, the payment of taxes, home ownership and letters in support. The unfavorable factor in this matter is the applicant's periods of unauthorized presence in the United States.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factor. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.