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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



H6

DATE: **SEP 10 2012**

OFFICE: MEXICO CITY, MEXICO

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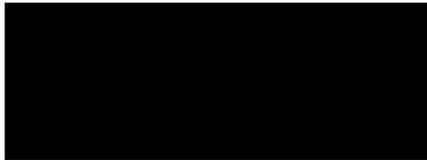
IN RE:

Applicant: 

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:



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 be "Perry Rhew", with a long horizontal flourish extending to the right.

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 10 years of her departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and her three minor children, born in 2004, 2006 and 2008.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director*, dated February 24, 2011

On appeal counsel asserts that the United States Citizenship and Immigration Services (USCIS) failed to adequately consider and evaluate each hardship factor individually and cumulatively and that a favorable exercise of discretion is warranted. *See Form I-290B, Notice of Appeal or Motion*, received March 28, 2011.

The record contains, but is not limited to: Form I-290B, counsel's appeal brief and earlier letter in support of the waiver and memorandum; various immigration applications and petitions; a hardship letter; a letter from the applicant; two brief letters from a social worker; supporting letters from family and friends; billing statements; income and employment documentation; marriage and birth certificates and family photos; and Mexico country conditions printouts. The record also contains 22 pages of Spanish-language documents which are not accompanied by full, certified English translations as required under 8 C.F.R. § 103.2(b)(3).¹ These include what appear to be a receipt for a motorcycle; banking and grocery receipts; and medical prescriptions. Because the required translations were not submitted for these documents, the AAO will not consider them in this proceeding. The entire record, with the exception of the Spanish-language documents described, was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who- ...

¹ 8 C.F.R. § 103.2(b)(3). Translations. Any document containing foreign language submitted to United States Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

(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.

The record reflects that the applicant entered the United States without inspection in or about February 1994 and remained until December 2009 when she departed voluntarily to Mexico. The applicant accrued unlawful presence in the United States for a period in excess of one year. As the applicant is seeking admission within 10 years of her departure, she was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(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. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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-Moralez*, 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.

The applicant's spouse is a 32-year-old native of Mexico and citizen of the United States who has been married to the applicant since May 2004. They have three young children ages four, five and six, all of whom have been residing in Mexico with the applicant since December 2009. The applicant's spouse states that separation from his wife and children has affected him emotionally, physically, medically and financially. He maintains that he has lost his appetite, worries all the time, cannot sleep, has fallen into a deep depression and was diagnosed with stress and insomnia by [REDACTED] who prescribed citalopram. The applicant's spouse explains that he has begun therapy and [REDACTED] confirms and notes that he has been prescribed trazadone and celexa. [REDACTED] asserts that the applicant's spouse has been diagnosed with Major Depressive Disorder, single episode, severe. She indicates that the applicant's spouse's condition manifests in the form of sleep disturbance, inability to cope with stress, extreme sadness, and high anxiety. [REDACTED] writes that in her opinion, it would be detrimental to the applicant's spouse to uproot him from his surroundings. Adding to his distress, the applicant's spouse contends that the father-child/husband-wife relationships will be destroyed if his wife and children remain in Mexico, and it will be extremely difficult for him to maintain any real contact with them. He adds that

spending years without either him or the applicant will be very hard on his children and that their pain will compound the extreme hardship he is facing.

The applicant's spouse states that the financial impact of continued separation will be extremely traumatic as he now has the added costs of supporting a second household in Mexico in addition to being the sole provider for his own. He explains that he has worked hard to establish good credit but will no longer be able to pay his debts while supporting two households. The applicant's spouse adds that if his children were to return to the United States he would be unable to afford proper daycare for them, would be unable to continue working, and would be forced into the welfare system. He writes that he is currently paying his mortgage and supporting his wife and children in Mexico but at some point will be unable to continue doing so. The applicant's spouse maintains that the cost of roundtrip airfare to visit his family in Mexico is at least \$686. Financial evidence submitted for the record corroborates the applicant's spouse's assertions concerning his income and expenses.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse including his significant emotional/psychological conditions, the impact these have had on his physical health and ability to function on a day-to-day basis, the familial impact of only rarely seeing his three young children, the eldest of whom is just six-years-old and that visiting them is cost-prohibitive, and the severe economic impact of separation. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

Addressing relocation, counsel contends that the applicant's spouse would face family separation even in Mexico as his mother and siblings reside lawfully in the United States. The applicant's spouse states that he fears he would not find employment in Mexico, that he cannot relocate without decent job prospects as he would then be failing to support his family, and that any jobs he does secure would pay very poorly. He writes that schools and medical facilities are much less adequate in Mexico than in the United States. Counsel asserts that the family would be severely limited in its access to housing, education, health care, nutrition, and sanitation. No corroborating documentary evidence addressing the economy, education, housing, social services, health programs, nutrition or sanitation in Mexico has been submitted for the record.

The applicant's spouse indicates that relocation would result in the loss of his U.S. employment with a company he has worked since June 2006 and his being forced to sell his home in which he has very little equity. He maintains that life in his Iowa community is safe and friendly but no such safety exists in Mexico where crime rates are high and American citizens are easy targets for theft, burglary, vandalism, kidnapping and other violence. The applicant's spouse additionally points to human rights abuses and corruption by government officials as well as rampant gang violence and crimes involving tourists. The AAO has reviewed the safety-related country conditions documents submitted as well as the State Department's current *Mexico Travel Warning*, dated February 8, 2012. Therein, U.S. citizens are warned that crime and violence are serious problems throughout the country and can occur anywhere, U.S. citizens have fallen victim to drug-related and gang-related violence such as homicide, gun battles, kidnapping, carjacking

and highway robbery, there is a rising number of kidnappings and disappearances throughout Mexico, and local police have been implicated in some of these incidents.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including his adjustment to a country in which he has not resided for a number of years; lengthy residence in the United States and family/community ties herein; his home ownership in the United States and employment since 2006 with the same company; and his economic, employment, health and social services-related, safety, and education concerns regarding Mexico. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Mexico to be with the applicant until she is no longer inadmissible to the United States.

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.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin*, *supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin*, *supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez 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 favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the applicant's significant family and community ties to the United States; her U.S. home ownership; payment of taxes; and apparent lack of a criminal record. The unfavorable factors are the applicant's immigration violations including her entry without inspection and her periods of unlawful presence and unauthorized employment in the United States. Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, pursuant to section 212(a)(9)(B)(v) of the Act, the AAO finds that a favorable exercise of 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 application is approved.*