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



U.S. Citizenship  
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Services



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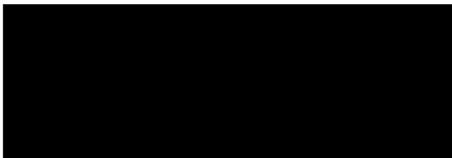
DATE: SEP 13 2012 OFFICE: MEXICO CITY (CIUDAD JUAREZ)

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)

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting District Director, Mexico City, Mexico, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion is granted, the previous decision vacated, and the waiver application 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 one year or more and seeking admission within ten years of his last departure from the country. The beneficiary of an approved spousal visa petition, he is seeking a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse and children.

The acting district director found the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision*, July 18, 2008. On appeal, the AAO found that, while the applicant had shown a qualifying relative would suffer extreme hardship by virtue of separation from her husband, he had failed to establish that extreme hardship would be imposed on a qualifying relative who relocated to Mexico to reside with the applicant. *Decision of the AAO*, December 8, 2010.

On appeal, the attorney for the applicant submitted an appeal brief detailing the hardships the qualifying spouse is facing as a result of her separation from the applicant. In support of the claimed hardship based on relocation, the attorney points out that the applicant's wife came to the United States as a teenager, has strong family ties to her adopted country (including her parents, extended family, and friends), and would encounter personal security and medical care issues in Mexico. In support of the motion, the applicant's counsel submits a brief and new supporting evidence. Although much of the evidence pertains to the issue of separation-based hardship that the AAO has already deemed established, the motion also addresses previously identified shortcomings regarding hardship based on relocation by providing translated letters of support (where only Spanish language letters were offered in support of the appeal), as well as information showing the deteriorating security situation in Mexico. The record consists of the supporting documents submitted with the Form I-601 and the appeal of the waiver denial, the current motion, and all supporting evidence. The entire record was reviewed and considered in rendering this decision.

The record reflects that the applicant entered the country without inspection or parole sometime in 1999 and remained here until voluntarily departing in May 2007. As a result, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 wife 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.

The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in Mexico or the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request. As we previously found the applicant to have demonstrated that his wife would suffer extreme hardship if she resided without him in the United States due to her emotional and financial dependency on her husband, we do not revisit the analysis of whether a qualifying relative will suffer extreme hardship by separation from the applicant and proceed to a consideration of the hardship to her of moving abroad to continue residing with her husband.

In dismissing the applicant’s prior appeal, the AAO found insufficient evidence on record regarding adverse country conditions or establishing that the qualifying relative’s ties to the United States outweighed her connections with the land of her birth. New documentary evidence remedies

previously identified deficiencies by establishing that relocating with her U.S. citizen children, ages five and eight, to Mexico would expose them all to personal safety and security threats from narcotics-related violence<sup>1</sup> and by showing that such a move would also deprive them of access to the standard of medical care to which they are accustomed in the United States. In addition, the updated record contains numerous translations of letters of support, including from the qualifying relative's lawful permanent resident mother and father, as well as in-laws, cousins, aunts/uncles, and friends who are U.S. citizens or lawful residents.

The record indicates that that the applicant's wife has lived here since the age of 15 and naturalized at 20, and newly submitted documentation supports the claim that all her close family members and siblings have U.S. citizenship or lawful permanent residence. Translated letters also support the qualifying relative's contention that her husband's only remaining relatives in Mexico are his parents. The AAO concludes that, coupled with prior evidence of the qualifying relative's gainful employment in the United States, the safety and security issues regarding relocating to Mexico with young children and loss of strong U.S. ties comprise hardships that rise to the level of extreme. Whereas our previous decision was based on a lack of cognizable evidence, the totality of the evidence now supports the applicant's contention that his wife would suffer extreme hardship by moving back to Mexico after 13 years, including her entire adult life, in the United States.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that the applicant's wife will suffer significantly greater hardship than the disruptions and inconveniences normally resulting when a spouse is refused admission and, therefore, that she will face extreme hardship if the applicant is unable to reside in the United States. 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 pursuant to such terms, conditions and procedures as she 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

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<sup>1</sup> The AAO notes the U.S. Department of State (DOS) published a Travel Warning earlier this year superseding both the April 22, 2011 Travel Warning it replaced and an earlier September 10, 2010 Travel Warning that the applicant's counsel provided in support of the motion. The series of warnings to U.S. citizens establishes that the ongoing threats posed by Transnational Criminal Organizations (TCOs) engaged in murder, gun battles, kidnapping, carjacking, and highway robbery have not diminished and may have worsened. The state of Michoacán, where the applicant lives and where both he and his wife were born, is the subject of a specific advisory that travelers defer non-essential travel. *See Travel Warning--Mexico*, DOS, February 8, 2012.

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 "balance 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 hardships the applicant's wife would face if the applicant were to reside in Mexico, regardless of whether she joined the applicant or remained in the United States; the applicant's lack of any criminal convictions; presence of his U.S. citizen wife and children, as well as extended family in the United States, with only his parents remaining in Mexico; gainful employment in the United States; and the passage of more than 13 years since the applicant's unlawful entry into the United States at the age of 18. The unfavorable factors in this matter are the applicant's unlawful presence and employment here and his lack of proof of filing tax returns.

Although the applicant's violations of U.S. law cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violation of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

In discretionary matters, the applicant bears the full burden of proving eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the prior decision of the AAO will be vacated and the waiver application approved.

**ORDER:** The motion is granted. The prior decision of the AAO is vacated. The waiver application is approved.