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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**



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DATE: SEP 18 2012

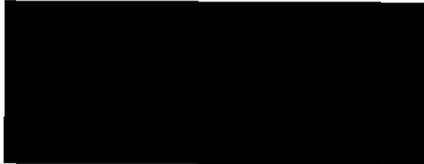
Office: MEXICO CITY

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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,


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. The waiver application will be approved.

The record establishes that the applicant is a native and citizen of Mexico who entered the United States without authorization in January 2000 and did not depart the United States until June 2010. 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

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 Ground of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated January 19, 2011.

In support of the appeal, counsel for the applicant submits the Form I-290B, Notice of Appeal, a criminal record search pertaining to the applicant, and medical documentation in regards to the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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

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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant 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-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 U.S. citizen spouse asserts that he will suffer emotional, physical and financial hardship were he to remain in the United States while the applicant continues to reside abroad due to her inadmissibility. In a declaration he explains that his wife is his strength and his dearest love and he cannot imagine life without her. He notes that he suffers from numerous medical conditions and his wife has been his caregiver in the past and without her, he would not have been able to care for himself. The applicant's spouse further details that he recently lost his job and is receiving unemployment benefits. He contends that he thus needs his wife to return to the United States so that she may be able to obtain gainful employment to assist in the finances of the household. The applicant's spouse references that as a result of her absence and the need to maintain two households, he has had to cancel a number of services, including life insurance policies, television, internet, savings accounts and security services. Finally, the applicant's spouse details the hardships he encountered when he traveled to Mexico to visit his wife, including unsanitary conditions that led to diarrhea and eye problems and safety concerns due to the high rate of kidnappings and killings in Mexico. *Letter from* [REDACTED]

In support, documentation has been provided establishing that since his wife's relocation abroad, the applicant's spouse has been in treatment due to depression. Evidence of antidepressants prescribed to the applicant's spouse has also been submitted. [REDACTED] confirms that the applicant's spouse will require ongoing outpatient treatment, medication and support and the long term prognosis will depend on the applicant's spouse's outpatient compliance and ability to resolve some of the issues and conflicts he has been having including getting his wife back from Mexico. *Report from* [REDACTED], dated August 19, 2010 and [REDACTED]. Moreover, a letter has been provided from the applicant's spouse's treating physician confirming that the applicant's spouse underwent major surgery five years ago at which time a large portion of his colon was removed and he has now developed a large hernia which needs to be repaired surgically and, as a result of this surgery and other chronic severe medical problems, it would be in the applicant's spouse's interest to have his wife present with him. *Letter from* [REDACTED] dated September 1, 2010. Further,

a letter has been provided from the applicant's spouse's primary care provider outlining the serious stomach problems and acute eye problems the applicant's spouse experienced as a result of his visit to Mexico due to the unclean living conditions he had to endure. *Letter from* [REDACTED] [REDACTED] dated July 28, 2010. Moreover, the AAO notes that the U.S. Department of State has issued a Travel Warning for Mexico, and in particular, Morelos, the applicant's birth place, due to the unpredictable nature of Transnational Criminal Organizations (TCO) violence. *Travel Warning-Mexico, U.S. Department of State, dated February 8, 2012.* Finally, evidence of the applicant's spouse's unemployment and the need for him to receive distributions from his retirement to make ends meet has been submitted by counsel. Based on a totality of the circumstances, the AAO 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, the applicant's spouse explains that he was born in the United States and has no ties to Mexico. He contends that he is unfamiliar with the language, culture and customs of the country. Further, the applicant's spouse references that as a result of the problematic economy in Mexico, he would not be able to maintain his standard of living. Finally, the applicant's spouse contends that he worries about his safety and well-being in Mexico due to the high rates of crime and violence and unsanitary and unsafe living conditions in Mexico. The record establishes that the applicant's U.S. citizen spouse, currently is his mid-60s, was born and raised in the United States and has no ties to Mexico. He is unfamiliar with the language, culture and customs of the country. He would have to leave his home, his community, his church, and the physicians familiar with his conditions and treatment plans. Finally, as noted above, a Travel Warning has been issued for Mexico, and in particular, Morelos, the applicant's birth place. 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. 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 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 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-Moralez, 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 hardship the applicant's U.S. citizen spouse would face if the applicant were to remain in Mexico, regardless of whether he accompanied the applicant or stayed in the United States; home ownership; church membership; evidence establishing the applicant's enrollment in an [REDACTED] at [REDACTED] Community College since February 2005; community ties; and the passage of more than ten years since the applicant's entry to the United States without authorization. The unfavorable factors in this matter are the applicant's entry to the United States without authorization and unlawful presence while in the United States.

The immigration violations committed by the applicant are 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 factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, 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 I-601 waiver application approved.

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