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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 24 2012

OFFICE: ALBUQUERQUE, NM

File:

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,

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 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 his departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

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 January 3, 2011.

On appeal counsel asserts that the applicant clearly established that if a waiver is not granted, his U.S. citizen spouse will experience extreme hardship and that the United States Citizenship and Immigration Services (USCIS) failed to adequately consider and evaluate each hardship factor individually and cumulatively. *See Form I-290B, Notice of Appeal or Motion*, received February 3, 2011 and *Counsel's Letter in Support of Appeal*, received March 9, 2011.

The record contains, but is not limited to: Form I-290B and counsel's letter; various immigration applications and petitions; a hardship letter; medical records and a psychological assessment; letters of support from friends and family; an affidavit regarding finances; financial, tax, and employment records; birth and marriage certificates and family photos; and country conditions documents for Mexico. The entire record 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- ...

(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 was brought by his parents as a child to the United States, in or about 1999. The applicant went to Mexico in October 2001 to renew his border crossing card which was issued on October 12, 2001. He returned to the United States shortly thereafter. The record shows that the applicant left again to renew his border crossing card in July 2007 and on July 21, 2007 he entered the United States as a visitor authorized to remain until January 20, 2008.

The applicant overstayed his authorized period and has remained in the United States ever since. The applicant accrued unlawful presence in the United States from his eighteenth birthday in November 2005 to July 2007 when he departed the United States voluntarily, a period in excess of one year. As the applicant is seeking admission within 10 years of his departure, he 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 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-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 spouse is a 24-year-old native of Mexico and citizen of the United States who has been married to the applicant since January 2009. She indicates that she met the applicant in junior high school, they began dating in high school and have been together ever since. She states that the applicant’s immigration process has been extremely overwhelming for her, she feels depressed all the time, has difficulty sleeping and when she does sleep she wakes up in tears from horrible nightmares and the stress is negatively impacting every aspect of her life including her ability to focus on her job and interact with others. [REDACTED] diagnoses the applicant’s spouse with generalized anxiety disorder, noting that she has excessive anxiety and worry (apprehensive expectation), occurring more days than not and that the anxiety, worry and physical symptoms cause clinically significant distress or impairment in social, occupational, and other important areas of functioning. [REDACTED] states that the absence of the applicant can cause devastating effects on the applicant’s spouse and it can be predicted that the family will suffer continued deterioration emotionally, medically and financially.

The applicant’s spouse expresses tremendous fear concerning the possibility of her husband returning to Mexico where he has not lived since he was a small child and where the only housing available to him is his parents’ abandoned house that was robbed and ransacked in 2008, has no heating system or utilities and is likely infested insects and vermin. She explains that the house is in a rural town called [REDACTED] where people are murdered, kidnapped and robbed on a daily basis and criminal cartels threaten and terrify the entire town. Corroborating country conditions documentation has been submitted for the record. The applicant’s spouse writes that she could not stand the thought of her husband living in such

terrible conditions and she would constantly fear for his safety. She remarks that when her husband's friend, [REDACTED], went to visit family in [REDACTED] December 2009 he was kidnapped and held for ransom for a month before being released. The applicant's spouse indicates that when people arrive in rural Mexico from the United States it is assumed that they have money and as a result, they are targeted by violent criminals. These assertions are generally corroborated by country conditions evidence in the record

The applicant's spouse maintains that her salary alone would be insufficient to pay the mortgage on the couple's home and that even if she found a second job in the current economy it is unlikely she would be able to support both herself in the United States and the applicant in Mexico. She explains that agricultural jobs are the only employment in [REDACTED] a field unfamiliar to the applicant who has lived in the United States since childhood. The applicant's spouse indicates that even if the applicant secured such a job there it would pay only about [REDACTED] per day. The record shows that the applicant's spouse recently earned her bachelor's degree in elementary education with which she can be expected to earn a modest salary in northern New Mexico. A budget submitted for the record, along with corroborating employment and tax documents, shows that the applicant has been the primary breadwinner in the household and without his income the couple's financial obligations would be a challenge to meet. The record shows additionally that the mortgage on the couple's home is in the name of the applicant's spouse and her brother-in-law who would be held financially liable in the event the applicant's spouse is unable to maintain the mortgage in the applicant's absence.

The applicant's spouse expresses concerns for her husband's health as he has suffered for many years with a condition still undiagnosed but which causes him intermittent bouts of severe upper abdominal pain. [REDACTED] writes that the applicant has been his patient since September 2000 and suspects that he has an ulcer or pancreatitis but efforts to evaluate and treat the condition have been hampered by the applicant's lack of insurance and financial resources. [REDACTED] notes that the applicant, who is employed full-time as an electrician, expects to secure health insurance in the near future which will assist in his diagnosis and treatment. The applicant's spouse contends that she will become more depressed and would likely develop even more serious health conditions as a result of the constant fear and worry she would endure concerning the applicant's safety, the extreme poverty in which he would live in Mexico, and his health condition in rural Mexico where the nearest hospital is three hours away and standards of health care are far below those in the United States. She explains that her husband's severe pain has led to her taking him to the emergency room on several occasions and that not being able to help him when he desperately needs her to survive saddens and suffocates her.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse including her significant emotional/psychological condition, the impact this has had and will likely continue to have on her health and ability to function on a day-to-day basis, her stated economic, employment, safety, and medical/health-related concerns for the applicant that effect the emotional well-being of the applicant's spouse, and her own significant economic challenges in the event of separation from the applicant. 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, the applicant's spouse states that she has lived in the United States since she was a child, all her family resides here lawfully including her parents, siblings, and grandmother – with whom she is extremely close. Her sister, [REDACTED] writes that their family is extremely close and would be devastated in the event of relocation as their family has never been away from each other for more than a week. [REDACTED] reports that the applicant's spouse assists in the care of her elderly grandmother, [REDACTED], who fell in January 2010 and is immobile without assistance. [REDACTED] relates that the applicant's spouse attends to her grandmother for 2.5 hours each day, they share a very strong relationship and love spending time together, and the applicant's spouse does not wish to leave her unattended or separate from her grandmother during what will likely be the final years of her life. The applicant's spouse writes that she has no family or support in Mexico, is completely unfamiliar with the country and culture and would have great difficulty finding work, adapting to the metric system and currency, finds it overwhelming to even contemplate the struggle to survive on a daily basis, and would be an emotional wreck living in poverty in the applicant's parents' abandoned house under the conditions previously described. The applicant's spouse indicates that she has finally realized her dreams of becoming a teacher and owning a home – both which would have to be abandoned were she to relocate to Mexico. She explains that neither she nor the applicant have experience in agricultural work, further exacerbating their likely descent into poverty in Mexico and assuring that they would be unable to pay their mortgage in the United States.

The applicant's spouse states that in Mexico she would be intimidated, terrified and worried about her safety and the applicant's all of the time. In addition to reviewing the country conditions documents submitted, the AAO has reviewed 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 State Department specifically warns U.S. citizens to defer all non-essential travel to the state of Chihuahua, noting that the situation there "is of special concern" especially in Ciudad Juarez which has one of the highest murder rates in Mexico.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including her adjustment to a country in which she has not resided since she was a child; her lengthy residence in the United States and close family/community ties herein; her home ownership in the United States and employment in the field in which she recently earned her degree; her emotional/psychological condition and concerns; her significant and well-documented safety concerns; and stated economic, employment, and health 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 she to relocate to Mexico to be with the applicant until he 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; his U.S. home ownership; steady employment and payment of taxes; and apparent lack of a criminal record. The unfavorable factors are the applicant's immigration violations which include 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.