



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

(b)(6)

DATE: **APR 09 2013**

Office: CIUDAD JUAREZ

File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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,

*Ron Rosenberg*

*for*  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who first entered the United States without inspection in May 2000 and departed to Mexico in November 2011, having accrued unlawful presence from November 8, 2006, his 18<sup>th</sup> birthday, until his departure. When the applicant sought to immigrate as the beneficiary of an approved Petition for Alien Relative (Form I-130), he 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 one year or more. He is seeking a waiver of inadmissibility in order to live in the United States.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director*, July 18, 2012.

On appeal, counsel for the applicant contends that the denial decision erred in overlooking the extreme hardships that the applicant's wife is suffering, and will continue to suffer, as a result of her husband's inadmissibility. In support of the appeal, counsel submits additional evidence, including, but not limited to: copies of naturalization and marriage certificates, a green card, and U.S. passports; hardship statements from the applicant and qualifying relative; other support statements; remittances (via debit card), receipts for tuition and expenses, and other financial records, including tax returns and W-2s; property tax statements; employment letters and proof of insurance termination; letters from health care providers and details of medical conditions and prescriptions; educational and career information; photographs; and country condition information. The entire record was reviewed and considered in rendering this decision.

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

(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) 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. The applicant's U.S. citizen spouse 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-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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, 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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's wife contends she will continue to suffer physical, emotional, and financial hardship if the applicant is unable to reside in the United States. The emotional hardship claim focuses on the qualifying relative's assertion that she suffers from anxiety and depression due to separation from the applicant, and that she has several medical conditions caused and/or exacerbated by stress. Documentation establishes that she has been diagnosed with and is being treated for a type of psoriasis symptomatic of immune disorders related to stress, and that this condition arose shortly after her husband's departure. There is also evidence she has a history of polycystic ovarian syndrome, which involves hormonal imbalances that affect her ability to start a family. The record shows her receiving medication for the former, but being unable to undergo treatment for the latter due to the absence of the applicant. A letter from her supervisor at work notes that she and co-workers have noticed changes in the qualifying relative's previously happy, smiling demeanor suggesting that, after becoming separated from the applicant, his wife began exhibiting symptoms of depression such as withdrawing from interactions with others, shutting down when confronted, and being prone to crying. Counsel asserts that, despite realizing she could benefit from a psychological evaluation and counseling, the applicant's wife is unable to consider treatment due to termination of the health and medical benefits she received under her husband's insurance policy.

The applicant's wife reports feeling burdened by concerns about her husband's well-being. Due to narco-related violence in Mexico, she is worried about his safety and about becoming a victim herself if she visits him. Official U.S. government reporting bears out these safety concerns by establishing that criminal activity has resulted in advisories to defer non-essential travel in many parts of Mexico, including the qualifying relative's native [REDACTED]. She reports being so haunted by the kidnapping and torture of a close family friend as to fear returning to Mexico. A lawful immigrant in 1994 at the age of five and a U.S. citizen since 2007, she does not feel safe traveling to see her husband to lessen the feelings of loss due to separation.

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Regarding financial hardship caused by separation, the record reflects that the applicant's wife left the apartment she shared with her husband and moved back into her parents' home when he left, which she claims was for economic necessity. There is evidence that for the three years before departing, the applicant was the couple's primary wage earner, contributing about 70% of household income. This allowed his wife to attend college in furtherance of her career plans, which she claims are now jeopardized by the need to pay rent to her parents as well as support her husband in Mexico. Documentation shows that she supports the applicant by funding an account he can access by debit card (in lieu of sending wire transfers to Mexico). Evidence that she has been receiving tuition assistance supports the claim that the applicant's wife was burdened by education expenses even before her husband's departure. The record substantiates her claim that termination of the applicant's employment ended her entitlement to health and medical benefits as his dependent spouse and she states she has been unable to afford replacement coverage. The record contains substantial evidence that maintaining two households represents a significant burden for the qualifying relative.

For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's wife is experiencing due to her husband's inadmissibility rises to the level of extreme. The AAO concludes that based on the evidence provided, were the applicant's wife to remain in the United States without the applicant due to his inadmissibility, she would suffer extreme hardship beyond those problems normally associated with family separation.

The qualifying relative contends that she would experience hardship if she relocated abroad to reside with the applicant. Regarding ties to the United States, documentation establishes that the applicant's wife has strong family connections and roots in the community. The record shows that her father and three siblings are U.S. citizens, her mother is a lawful permanent resident, and they live together in one household as a close-knit family. Both she and her husband were employed full-time, and she is working as a certified nursing assistant while pursuing education to further her goal of becoming a nurse. She has lived here for nearly 19 of her 24 years and claims to be unable to imagine returning to the country she left as a child. She claims that relocating would be devastating to her mother, with whom she maintains a close bond and who remains depressed over the recent death of her own mother. Besides worrying about the impact on her mother of their potential separation, the applicant's wife expresses worry about her and her husband's opportunities for healthcare, safety, and education in Mexico due to the lack of U.S. standard healthcare and the current violence there.

The qualifying relative's claims to fear for their safety in Mexico due to ongoing violence, manifested to her by the kidnap/torture of the family friend noted above, are supported by official U.S. government reporting:

**CRIME:** Crime in Mexico continues to occur at a high rate and can often be violent. Street crime, ranging from pick pocketing to armed robbery, is a serious problem in most major cities. Carjackings are also common, particularly in certain areas (see the Travel Warning for Mexico). The homicide rates in parts of Mexico have risen

sharply in recent years, driven largely by violence associated with transnational criminal organizations.

*Mexico—Country Specific Information*, U.S. Department of State (DOS), February 15, 2013.

The U.S. Embassy site has published a series of warnings regarding current threats, most recently in November 2012, advising U.S. citizens against non-essential travel to many parts of Mexico, including [REDACTED]. See *Travel Warning—Mexico*, DOS, November 20, 2012.

The qualifying relative's concerns regarding personal safety are thus substantiated by the record and by government guidance on the country. Based on a totality of the circumstances, the AAO concludes the applicant has established that his wife would suffer extreme hardship were she to relocate abroad to reside with the applicant.

Review of the documentation on record, when considered in its totality, reflects the applicant has established a qualifying relative 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).

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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 accompanied the applicant or remained here; the applicant's lack of any criminal record; supportive statements; passage of nearly 13 years since the applicant was brought to this country as an 11-year-old; and his history of stable employment. The only unfavorable factor in this matter is the applicant's accrual of unlawful presence.

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

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained. The waiver application is granted.