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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

Date: **APR 10 2013** Office: CIUDAD JUAREZ (ANAHEIM)

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

SELF-REPRESENTED

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 that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Anaheim International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to a U.S. citizen and the mother of two U.S. citizen children and four stepchildren. She is the beneficiary of an approved Petition for Alien Relative (Form I-130) and Petition for Alien Fiancée (Form I-129F). The applicant seeks 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 her spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 20, 2012.

On appeal, the applicant's husband claims that he is suffering extreme financial and psychological hardship because of the separation from the applicant. *Form I-290B, Notice of Appeal or Motion*, dated May 16, 2012. The applicant also submits new evidence of hardship on appeal.

The record includes, but is not limited to, statements from the applicant's husband and children; letters of support; medical and psychological documents for the applicant's husband; employment documents for the applicant's husband; financial documents, including household and utility bills in English and Spanish¹, past-due notices, and home-foreclosure documents; school records for the applicant's children, and country-conditions documents on Mexico. The entire record was reviewed and considered, with the exception of the Spanish-language documents, in arriving at a decision on the appeal.

Section 212(a)(9) 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-

....

¹ Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As some of the bills are in Spanish and are not accompanied by English-language translations, the AAO will not consider them in this proceeding.

(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.

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- (v) Waiver.-The [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 [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. Hardship to the applicant, her children, or her stepchildren can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 United States Citizenship and Immigration Services (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 of Immigration Appeals (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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

In the present application, the record indicates that in 1995, the applicant entered the United States without inspection. In December 2009, the applicant departed the United States. The applicant accrued over one year of unlawful presence between April 1, 1997, and December 2009. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year, and she seeks admission within 10 years of her departure from the United States. The applicant does not contest her inadmissibility.

The record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

Describing the hardship to the applicant’s husband should he join the applicant in Mexico, in a psychological evaluation dated June 13, 2011, [REDACTED] reports that according to the applicant’s husband, joining the applicant in Mexico means losing his employment with the company that

for which he has worked for 16 years. He also states his quality of life will deteriorate because of the constant fear, anxiety and insecurity he will feel in Mexico, on account of the violence there. Additionally, [REDACTED] claims that the applicant's husband shares custody of his four children with his ex-wife, and if he joins the applicant in Mexico, his "psychological condition will further deteriorate" because of the guilt and loss he will feel being separated from his children. [REDACTED] diagnoses the applicant's husband with major depression and panic disorder.

The applicant's husband states the applicant resides in [REDACTED] and when he visits her, he leaves his vehicle in the United States "for fear of theft and or kidnapping," and takes a taxi in Mexico. He also feels that he is "exposing [his] family to rampant crime and violence," and if he joins the applicant in Mexico, he is "doomed to live in constant fear." The AAO notes that the applicant submits numerous articles about the violence in [REDACTED] and a Department of State travel warning, which has since been updated on November 20, 2012. The most recent State Department travel warning states that "the Mexican government has been engaged in an extensive effort to counter [Transnational Criminal Organizations (TCOs)] which engage in narcotics trafficking and other unlawful activities throughout Mexico.... As a result, crime and violence are serious problems throughout the country and can occur anywhere." The warning also states that "battles between criminal groups resulted in assassinations in areas of Tijuana frequented by U.S. citizens. Shooting incidents, in which innocent bystanders have been injured, have occurred during daylight hours. Twenty-five U.S. citizens were the victims of homicide in the state in the 12-month period ending July 2012." The report recommends that caution be exercised, especially at night, in Baja California. See http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html.

Based on his safety concerns in Mexico; his minimal ties to Mexico after living outside of the country for many years; his psychological issues; his separation from his four children in the United States; the emotional effect of raising his stepchildren in Mexico; his limited employment prospects; and financial issues, the AAO finds that the applicant's husband would suffer extreme hardship if he were to join the applicant in Mexico.

Regarding the hardship caused by their separation, the applicant's husband states he is suffering extreme financial and psychological hardship. He claims that he is having difficulty supporting two households, one in Mexico and one in the United States. Documentation in the record establishes that the applicant's husband is past due on numerous household and utility bills, his home was in foreclosure proceedings in 2012, and he filed for bankruptcy in February 2012. In his letter dated March 22, 2011, [REDACTED] the applicant's husband's supervisor, indicates that the applicant's husband has missed out-of-town work opportunities because he does not have childcare for his children. [REDACTED] states that this is a financial hardship to the applicant's husband and to their company because they do not have anyone to oversee the project for them. The applicant's husband states he is a heavy equipment operator which requires "100% concentration on the job." He claims that he is having difficulty concentrating because he is constantly thinking about the applicant's "well-being in Mexico," and he fears a job-related injury or loss of employment. Medical documentation in the record establishes that on November 18, 2011, the applicant's husband suffered a work-related injury to his back and was prescribed medication to treat it. Moreover, he received temporary disability benefits because of his injury.

The applicant's husband claims that he is suffering extreme psychological hardship, and he has been diagnosed with depression and panic disorder. Additionally, according to the applicant's husband, he has high blood pressure. The applicant's husband also states his stepdaughters are suffering emotionally because they are separated from their mother. The applicant's daughters state they fear for their mother in Mexico, and they are saddened and frustrated by their separation from the applicant.

The AAO finds that considering the applicant's husband's hardships in the aggregate, specifically his financial issues, having to care for his stepchildren alone, emotional issues, his concern for the applicant in Mexico, and the effect of his stepchildren's hardship on his emotional and mental state, the record establishes that the applicant's husband would face extreme hardship if he remained in the United States in her absence. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(a)(9)(B)(v) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h)(1)(B) 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-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 adverse factors in the present case include the applicant's entry without inspection and her unlawful presence. The favorable and mitigating factors are the applicant's U.S. citizen spouse and children, the extreme hardship to her spouse if she were refused admission, her good moral character as described in several letters of support, and her lack of a criminal record.

The AAO finds that although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse

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factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden.

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