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



U.S. Citizenship  
and Immigration  
Services

DATE: JAN 02 2013

Office: SAN DIEGO, CA

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by District Director, San Diego, California, 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 was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and son.

In a decision, dated June 10, 2011, the district director found that the applicant had failed to submit sufficient evidence to substantiate her claims regarding hardship to her spouse as a result of her inadmissibility. The application was denied accordingly.

On appeal, the applicant states that the district director's finding that her spouse is not experiencing extreme hardship as a result of her inadmissibility is erroneous. She states that she is submitting additional facts that should be sufficient for approving her waiver.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (I).

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant entered the United States on or about August 7, 2002, as a nonimmigrant visitor with authorization to remain in the United States until February 6, 2003. On September 3, 2009 the applicant was granted voluntary departure until January 4, 2010. The applicant departed the United States on or about January 1, 2010. The applicant accrued unlawful presence from October 14, 2004, the date she turned 18 years old, until January 2010. The applicant is therefore inadmissible under section 212(a)(9)(B)(i) of the Act for having been unlawfully present in the United States. The applicant's qualifying relative is her U.S. citizen spouse.

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 v. I.N.S.*, 138 F.3d 1292 (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.

The record contains references to hardship the applicant’s child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children 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 child will not be separately considered, except as it may affect the applicant’s spouse.

The record of hardship includes hardship letters, medical documentation, financial documentation, and country condition reports.

The applicant’s spouse is claiming that he would suffer extreme financial, emotional, and physical hardship as a result of relocating to Mexico. The record indicates that the applicant’s spouse was born and raised in the United States, has a close knit family in the United States, cannot speak the Spanish language, and is employed as a commercial diver. The applicant’s spouse states that he

does not want to separate from his family in the United States and that he would fear for his safety living in Mexico. The record indicates that the applicant's spouse is allergic to bee stings, that he would require emergency medical care if he were stung by a bee, and that emergency services in Mexico are below U.S. standards. The applicant's spouse claims that given these circumstances his health and safety would be at risk if he were to relocate. He also states that he would not be able to find employment in his profession to support his wife and stepson. He states that he took out \$25,000 in student loans to become a certified commercial diver and that this certification does not transfer to recreational diving. He states that he would not be able to pay his student loans if he relocated given that the average gross income of an individual in Mexico is approximately \$5,000 per year. The applicant's spouse submitted documentation that he earned approximately \$40,000 in 2010 and that this amount was lower than usual given the lack of work because of the oil spill in the Gulf of Mexico. Finally, in regards to Mexico, the applicant's spouse states that he is Protestant and because Mexico is 94% Catholic, he believes he will have a hard time finding a place of worship in the country. We find that the record supports the applicant's spouse's claims regarding his close ties to the United States; lack of ties to the culture and language of Mexico; employment and student loan record; potential need for emergency services; and the lower standard of emergency medical services available in Mexico, such that we find that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico.

We also find that the applicant's spouse is suffering extreme emotional and financial hardship as a result of being separated from the applicant. The record indicates that the applicant entered the United States at the age of 15 years old and approximately 10 months after returning to Mexico, at the age of 24 years old, she had what was classified by doctors in Mexico as a "crisis of conscientiousness and fear". The applicant's spouse states that the applicant was hospitalized for a few weeks because of a mental breakdown and only after being heavily medicated was she able to leave. The applicant's spouse relates that this emotional breakdown affected him emotionally and financially as he is now always worrying about his spouse's physical safety and mental health in Mexico. In addition, he states that he has struggled financially as a result of separation because he has to pay the applicant's medical bills, he has accumulated travel expenses, and has not been able to advance in his employment because of his absence from work and his mental state. A letter from the applicant's spouse's doctor in Alabama, dated April 18, 2012, indicates that she has been attempting to treat the applicant for situational depression and adjustment disorder due to his being separated from his spouse. She states that the applicant's spouse is suffering insomnia, anxiety, guilt, loss of appetite, anger, an inability to concentrate, and memory loss. She states further that the applicant's spouse has not responded well to medication for his symptoms and because of financial constraints, he cannot attend counseling. She states that the applicant's spouse has begun to cope with his stress through consuming excessive amounts of alcohol. Finally, in regards to separation, the applicant's spouse states that he is concerned with this ability to perform his high risk job as a commercial diver because of his mental health situation. Thus, we find, given the mental health problems of the applicant in Mexico, the emotional stress this situation is causing the applicant's spouse, the high risk employment of the applicant's spouse, and the financial struggles separation is causing, the applicant's spouse's hardship as a result of separation also rises to the level of extreme.

Considered in the aggregate, the applicant has established that her spouse would face extreme hardship if the applicant's waiver request is denied.

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 favorable factors in the applicant's case include the hardship to the applicant's spouse and child if she were denied a waiver of inadmissibility; the fact that the applicant entered the United States and began to overstay her authorized stay as a minor; and, as evidenced by numerous statements in the record, the applicant's positive attributes as a loving mother and wife. The unfavorable factors in the applicant's case include her unlawful presence in the United States, her unlawful employment in the United States, and her arrest for driving under the influence of alcohol on January 1, 2008.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.