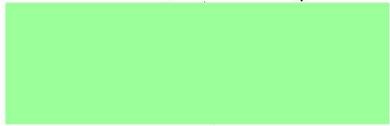




U.S. Citizenship
and Immigration
Services

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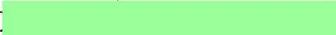


Date: JAN 03 2013

Office: PHOENIX

FILE: A 

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:

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.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO) on April 4, 2011. The matter is now before the AAO on motion. The motion will be granted and the underlying application approved.

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 one year or more and seeking admission within ten years of her last departure. The applicant is married to a U.S. citizen. 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 remain in the United States with her U.S. citizen husband and child.

In a decision dated November 18, 2008, the district director found the applicant inadmissible for having accrued unlawful presence in excess of one year. The district director concluded that the applicant failed to demonstrate that her U.S. citizen spouse would suffer extreme hardship as a result of her inadmissibility to the United States and denied the waiver application accordingly. In a decision dated April 4, 2011, the AAO found that the applicant's husband would not experience extreme hardship upon relocation to Mexico or remaining in the United States. The AAO dismissed the appeal accordingly.

On April 29, 2011, the applicant submitted a Form I-290B (Notice of Appeal or Motion), indicating in Part 3 that she was submitting additional factual evidence for the AAO to review and consider on motion. However, as indicated by the check mark at box B of Part 2 of the Form I-290B, the applicant elected to file an appeal. Nevertheless, the Table of Exhibits submitted by the applicant with the additional evidence refers to the documentary evidence as supporting a "motion to reconsider/reopen." Upon review, the AAO will treat the April 29, 2011, filing of the Form I-290B as a motion to reconsider/reopen.

On motion, the applicant submits new evidence which she contends overcomes the reasons for dismissal of her appeal. The applicant submits evidence regarding violence and safety issues in Mexico, which she argues, is sufficient to demonstrate that if removed to that country, her qualifying relative will experience extreme hardship. The applicant contends that the submitted evidence on motion outlining medical, financial, and emotional hardship to the applicant's husband demonstrates extreme hardship to her qualifying relative.

The regulation at 8 C.F.R. § 103.5(a) states, in pertinent part, that:

(a) Motions to reopen or reconsider

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. . . .

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to

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establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The record includes the following new or additional evidence: a copy of the birth certificate of the applicant's U.S. citizen children; a statement from the applicant's husband; a marriage license; the applicant's household's current monthly expenses budget and a proposed monthly expenses comparison budget in the event of the applicant's removal; earnings statements; documentation concerning child support payments; pay stubs and utility bills; income tax returns; a psychological evaluation; character reference letters; country conditions evidence; and letters regarding the crime rate and drug-related violence in the municipality of [REDACTED], Chihuahua, in Mexico.

Here, the AAO finds that the additional evidence meets the requirements of a motion to reopen found in 8 C.F.R. § 103.5(a)(2). The evidence points to new facts not previously addressed, which are supported by documentary evidence.

The record shows that the applicant entered the United States with a border crossing card in 2000 and overstayed her period of authorized stay. The record further shows that the applicant departed the United States for one day in 2007, triggering the unlawful presence ground of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. As the applicant has accrued unlawful presence in the United States in excess of one year and is seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant did not contest inadmissibility on appeal, and she has not contested her inadmissibility on motion. Accordingly, the AAO will not disturb the previous finding that the applicant is inadmissible to the United States for having accrued unlawful presence in the United States.

As discussed in the AAO's dismissal of the applicant's appeal, her eligibility for a waiver under section 212(a)(9)(B)(v) is dependent, first, upon a showing that the bar to her inadmissibility would impose extreme hardship on her U.S. citizen husband. Hardships that the applicant's child or other family members of her U.S. citizen spouse would experience as a result of her inadmissibility are not considered in section 212(a)(9)(B)(v), except to the extent that they would affect the applicant's qualifying relatives. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an 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 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 the 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 is 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 AAO turns first to a consideration of the additional evidence submitted to establish that the applicant's husband would suffer extreme hardship if the applicant's waiver application is denied.

The first step required to obtain a waiver of inadmissibility is to establish that the applicant's U.S. citizen husband would suffer extreme hardship if he remained in the United States while the applicant relocated abroad due to her inadmissibility. The AAO, in its decision dated April 4, 2011, found that extreme hardship had not been established. Specifically, the AAO noted that the emotional hardships the applicant's husband experienced, although significant, were insufficient to demonstrate extreme hardship when considered on their own. The AAO further noted the submitted psychological evaluations insufficient to demonstrate extreme hardship upon separation. The AAO found that, though counsel for the applicant asserted that the applicant cares for five children, the record on appeal did not contain evidence that the applicant's spouse was providing financial support for the children.

On motion, the applicant contends that her husband will experience emotional, financial, and psychological hardship if he remains in the United States while the applicant resides abroad due to her inadmissibility. In an undated letter submitted on motion, the applicant states that she and her husband have struggled to move their family forward and to build a future for their children. She asserts that together, they have been able to provide their children with the love and stability they need. In a declaration dated April 27, 2011, the applicant's spouse explains that his wife is his life partner; that she gives him the strength to continue on with life; and that he feels secure having her by his side. The applicant's spouse indicates that his children from prior relationships are all emotionally attached to the applicant, that the applicant takes daily care of the children, and that she "is a wonderful homemaker." The applicant's spouse further indicates he is troubled and nervous about the dangers the applicant would face were she to relocate to the municipality of [REDACTED] in the state of Chihuahua, Mexico. The applicant's spouse asserts that he "cannot stop thinking about the danger; [he] cannot eat or sleep worrying about our future if we were to be separated."

Here, the AAO notes that on November 20, 2012, the United States Department of State updated its Travel Warning for United States citizens traveling to Mexico. The Travel Warning notes that since 2006, the Mexican government has engaged in an extensive effort to combat transnational criminal organizations (TCOs). The TCOs, meanwhile, have been engaged in a struggle to control drug trafficking routes and other criminal activity. Bystanders, including U.S. citizens, have been injured or killed in violent incidents in various parts of the country, especially, though not exclusively in the northern border region, demonstrating the heightened risk of violence throughout Mexico. The Travel Warning indicates that during some of these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area.

The Travel Warning further indicates that TCOs, meanwhile, engage in a wide-range of criminal activities that can directly impact United States citizens, including kidnapping, armed car-jacking, and extortion that can directly impact United States citizens. According to the Travel Warning, the number of U.S. citizens reported to the Department of State as murdered under all circumstances in Mexico was 113 in 2011 and 32 in the first six months of 2012. Regarding the state of Chihuahua, the Travel Warning indicates that U.S. citizens "should defer non-essential travel to the state of Chihuahua," as the drug-related violence throughout the state is of special concern. The travel warning mention that various areas in the state have seen an increase in violent crime, and that U.S. citizens have been victims of narcotics-related violence in incidents that have occurred throughout the state. Based on the increased violence in Mexico and the Travel Warning issued to U.S. citizens,

the AAO notes the risks U.S. citizens face when traveling to certain areas in Mexico, including the area where the applicant would reside. Therefore, the ability of the applicant's husband and children to visit the applicant in Chihuahua, Mexico is limited. Additionally, the AAO recognizes that the documented emotional challenges the applicant's husband would face in the event of separation constitute a significant hardship factor, as the evidence demonstrates the many contributions of the applicant to the family's well-being. Lastly, the AAO notes that the applicant's husband's assertions regarding the unsafe conditions in the area where the applicant would be residing are corroborated by the information contained in the Travel Warning and in various news articles submitted on motion. These submissions indicate unsafe conditions and an increase in narcotics-related violence in the municipality of [REDACTED]. The emotional and psychological difficulties these unsafe conditions would cause the applicant's husband are detailed by several attestations submitted on motion.

With regards to financial hardship, the applicant's spouse mentions in his letter dated April 27, 2011, that, in addition to him being employed full-time, his wife is also employed to help the family meet their household obligations and expenses. The applicant's husband indicates that without the financial support he receives from the applicant, he would be unable to cover their household expenses and his child support obligations.

The record includes supporting financial documentation establishing that the applicant's husband would experience financial difficulties in the event of separation. In a letter dated April 21, 2011, [REDACTED], indicates that the applicant's husband has been working for [REDACTED] since 1995 and is one of the company's essential workers. Mr. [REDACTED] mentions that separation would have a drastic effect on the applicant's husband's work performance, as all of the company's cleaning services are conducted at night and separation would mean that the applicant's husband would have to employ someone to watch over his children while he is at work. In addition, Mr. [REDACTED] indicates that he has associated himself with the applicant and her husband and that separation would bring the "disruption of their family home," as well as the loss of the applicant's attention and affection towards her family. The record also includes nine letters of support, written by the applicant's family members and friends of the family, attesting to the emotional and financial difficulties the applicant's husband would face in the event of separation. Additionally, the record includes tax records and pay stubs, which indicate that the applicant is the main provider for the family by earning approximately \$2,480 a month. The applicant's husband earns approximately \$1,920 a month and the record evidence on motion indicates that his monthly child support payments total \$1,250 a month. The record evidence in support of the family's self-prepared monthly budget includes utility bills, bank records, and printouts of the applicant's husband child support payments to his children from prior relationships. The documentary evidence submitted on motion reflects that, on average, the family's fixed obligations total \$3,434. The applicant estimates over \$500 a month on additional household expenses, remittances, and other expenses. From the documents provided, the AAO acknowledges that the applicant's husband would experience financial difficulties as a result of separation from the applicant if she were denied admission to the United States.

With regards to psychological hardship, the applicant submitted on motion a psychological evaluation conducted by Dr. [REDACTED] on May 3, 2011, which is the fourth psychological report submitted by the applicant in these proceedings. The conclusions reached by Dr. [REDACTED] that

the applicant's husband is experiencing Major Depressive Disorder and Anxiety Disorder corroborate Dr. [REDACTED] letter, which was submitted on appeal, that the applicant's spouse is under treatment for severe anxiety and major depression. As such, the inconsistencies noted by the AAO in its April 4, 2011, decision have been corrected on motion, as there is now corroborative evidence indicating that the applicant is experiencing psychological difficulties that are caused, in large part, by his worry over his wife's immigration situation.

Accordingly, the record reflects that the cumulative effect of the emotional, psychological, and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme hardship. In this case, the deficiencies addressed by the AAO in its decision on appeal have been corrected by motion, as there is documentary evidence sufficient to demonstrate the financial difficulties the husband would experience from separation, as well as his depression and anxiety resulting from the prospect of separation from the applicant and the risks of travel to Mexico with their children. The AAO thus concludes that if the applicant were unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship.

Regarding whether the applicant's husband would suffer extreme hardship if he relocated abroad, the AAO, in its decision dated April 4, 2011, concluded that extreme hardship had not been established. Specifically, the AAO noted that the differences in wages and economies of the United States and Mexico were insufficient to establish extreme hardship. The AAO further noted that the psychological evaluations did not address potential impact on the applicant's husband if he were to relocate to Mexico.

On motion, the applicant's husband explains that he is extremely nervous about moving with the applicant and their children to the state of Chihuahua, a state he characterizes as "the number one ranked state for violence in Mexico." Additionally, the record notes that the applicant's husband and the couple's children would experience extreme hardship in Mexico because of wage inequality, high unemployment and the quality of life in the region where they would be residing. The applicant's husband further asserts that he would be separated from his children who reside in the United States if he relocated, and that the majority of his family resides in the United States and relocation abroad would cause him emotional hardship.

The record reflects that the applicant's husband has been residing in the United States for over 28 years, suggesting relocation would require significant adjustment. The applicant's spouse would have to leave his community, his employment of over 15 years, the psychologists familiar with his diagnosis and treatment, and potentially his family, including a daughter and two sons from prior relationships. He would experience concern for his and his children's safety and well-being in the municipality of [REDACTED], in the state of Chihuahua, Mexico. In addition, there is evidence in the record indicating that the applicant's husband takes care of his mother, who is 75 years of age. The record evidence reflects that the applicant's husband's mother requires multiple medical interventions related to her being diagnosed with arthritis. The applicant's husband cares for her and is responsible for taking his mother to doctor's appointments and medical surgeries. The applicant's husband likely would not be able to maintain his current standard of living. Finally, the U.S. Department of State has issued a travel warning, advising U.S. citizens of the high rates of crime and

violence in Mexico, particularly the state in which the applicant's husband would be living in with the applicant and their children.

A review of the documentation in the record reflects that the deficiencies identified by the AAO in its April 4, 2011, decision have been corrected on motion by the submission of additional documentary evidence outlining the factors and difficulties that, when considered in the aggregate, lead to a finding of extreme hardship. Accordingly, the record evidence, when considered in its totality, reflects that the applicant has established on motion that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Chihuahua, Mexico to reside with the applicant. 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-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.

The favorable factors in this matter are the extreme hardship the applicant's husband would face if the applicant were to reside in Mexico, regardless of whether he accompanied the applicant or stayed in the United States; the difficulties the applicant's children would face in the event of separation from the applicant or in joining the applicant to live in Chihuahua, Mexico; the applicant's community ties, including her involvement with the [redacted] Head Start Program and her volunteerism at a children's hospital for children with cancer; the applicant's apparent lack of a criminal record; her gainful employment in the United States; support letters from the applicant's family, friends, employer, and community members; and her payment of taxes. The

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unfavorable factors in this matter are the applicant's periods of unlawful presence and unlawful employment while in the United States.

It is noted that 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 of Homeland Security's discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has sustained that burden. Accordingly, the motion to reopen will be granted and the waiver application will be approved.

ORDER: The motion to reopen is granted, and the waiver application is approved. The matter is returned to the District Director for continued processing.