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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: **JAN 18 2013** Office: MEXICO CITY, MEXICO

IN RE: Applicant:

APPLICATION: 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. section 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, appearing to read "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 10 years of her last departure. She is married to a United States citizen. She 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 22, 2012.

On appeal, the applicant's spouse states that he is suffering extreme hardship without the applicant and needs physical assistance with his daily activities, including the caretaking of his ill son. *Form I-290B*, received on March 26, 2012.

The record includes, but is not limited to, a psychological evaluation of the applicant's spouse by [REDACTED], dated March 15, 2012; medical records relating to the applicant's spouse; medical records related to the applicant's son; a statement by [REDACTED], dated March 14, 2012, pertaining to the applicant's spouse's son; a statement from [REDACTED], dated August 25, 2010, pertaining to the applicant; and photographs of the applicant, her spouse and the applicant's spouse's son. The entire record was reviewed and all relevant evidence 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. . . .

The record indicates that the applicant entered the United States in 1990 without inspection, and remained until she departed in September 2010, a period over one year. As such, the applicant was unlawfully present in the United States from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until September 2010, and is now seeking admission within 10 years

of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding:

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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 or any children 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 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 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-I-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 has submitted numerous statements asserting that he will experience extreme physical and medical hardship if the applicant is denied admission. In a statement received in September 2010 the applicant’s spouse explained that he is 68 years old (now 70) and suffers from several serious medical conditions. He also explains that his adult son is now terminally ill with kidney disease, must receive dialysis three times a week, and that he is responsible for caring for his son, who is single and who resides with him. Without the physical assistance of the applicant, the applicant’s spouse asserts, he would not be able to manage his health conditions, care for his son or function on a daily basis.

The record contains significant medical evidence corroborating the applicant’s spouse’s assertions, including a letter from a I [redacted] stating that the applicant’s spouse suffers from Diabetes Mellitus with Renal Manifestation, Hypertension and Chronic Kidney Disease Stage III. The record also contains an “End Stage Renal Disease Medical Evidence Report” regarding the applicant’s son which details that he has end stage renal disease and needs assistance with his daily activities. There is another document addressed to the applicant’s son from UCLA’s Health System Transplant

Services accepting him onto an organ transplant list due to his kidney failure. The record contains numerous other documents, including hospital records, pharmacy prescription receipts and other records which support the applicant's spouse's assertion that both he and his son suffer from serious medical conditions.

The AAO finds this evidence sufficient to establish that the applicant's spouse and son require physical assistance to perform their daily activities and manage their medical issues and will be considered a significant hardship factor in determining the hardship on the applicant's spouse due to separation.

The record also contains a psychological examination of the applicant's spouse by [REDACTED] dated March 15, 2012. [REDACTED] reviews the factors impacting the applicant's spouse's emotional and mental health and concludes that he is suffering from Major Depressive Disorder, Severe and Recurrent with Psychotic features.

When these hardship factors are considered in the aggregate they establish that the applicant's spouse would experience hardship impacts rising to the degree of extreme hardship due to separation.

The applicant's spouse has also asserted that he would not be able to relocate to Mexico with the applicant due to the physical and emotional impacts that would result. *Statement of the Applicant's Spouse*, undated. He explains that due to the seriousness of his son's medical condition and the lack of any one else to care for him that his son would suffer severe consequences if he were not there to care for him.

As discussed above, the record contains probative and persuasive evidence establishing the seriousness of the applicant's spouse's son's medical condition. His treatment includes taking numerous medications and receiving dialysis three times a week. It is evident that the applicant's spouse would experience significant emotional hardship should he relocate to Mexico without his son. He and his son would both face substantial physical and emotional hardship in Mexico due to their medical needs and the interruption of their medical care in the United States.

The AAO also finds other factors would impact the applicant's spouse if he were to relocate. The applicant's spouse has resided in the United States for three decades, and has been a patient of Dr. [REDACTED] for 22 years to treat his own medical conditions. Given the applicant's spouse's age, medical conditions, community ties and the physical and medical dependence of his adult son, the AAO finds that the applicant's spouse would experience extreme hardship upon relocation to Mexico.

As the AAO has found that a qualifying relative will experience extreme hardship upon relocation and separation, it may now determine whether the applicant warrants a waiver 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 AAO finds that the unfavorable factors in this case include the applicant's unlawful presence. The favorable factors in this case include the presence of the applicant's spouse, the extreme hardship her spouse would experience due to her inadmissibility, the length of time both the applicant and her spouse have resided in the United States, the hardship impacts to her spouse's son due to her inadmissibility and the lack of any criminal record during her residence in the United States. Although the applicant's unlawful presence is a serious matter, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The district director's decision will be withdrawn and 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 rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.