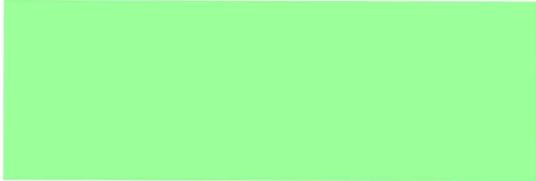




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JAN 18 2013

Office: MEXICO CITY (ANAHEIM)



IN RE: [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 District Director, Mexico City (Anaheim, California), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a 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 admission within 10 years of her last departure. The applicant is the spouse of a U.S. lawful permanent resident. She seeks a waiver under 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 director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. See *District Director's Decision*, dated August 19, 2011.

On appeal, the applicant's spouse reiterates his hardship factors and submits new evidence for consideration. See *Form I-290B, Notice of Appeal or Motion*, dated September 8, 2011.

The evidence of record includes, but is not limited to: statements from the applicant's spouse and stepson, psychological evaluations of the applicant and her spouse, court disposition documents for the applicant's stepson, financial documents, family photographs, copies of relationship and identification documents; and Spanish-language newspaper articles.

8 C.F.R. § 103.2(b) states:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As such, the Spanish-language documents without English translations cannot be considered in analyzing this case. However, the rest of the record was reviewed and all relevant evidence was considered in reaching a decision on the appeal.

Section 212(a)(9) states in pertinent part:

(B) Aliens Unlawfully Present.-

(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.

(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.

The record reflects that the applicant entered the United States on June 13, 2009, and she remained in the United States until December 2010, when she voluntarily departed. The AAO finds that the applicant accrued over one year of unlawful presence from July 12, 2009 until December 2010. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of her 2010 departure, she is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility.

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 other family members can be considered only insofar as it results in hardship to a qualifying relative. 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*, 21 I&N Dec. 296, 301 (BIA 1996).

The record contains references to hardship the applicant and her children would experience if the waiver application were denied. It is noted that Congress did not include hardships to aliens and their children as factors 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 hardships to the applicant and her children will not be separately considered, except as they may affect the applicant's 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, 631-32 (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, "[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., *In re 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, the applicant's spouse states that being separated from the applicant causes him both financial and emotional hardship. The record demonstrates that the applicant's spouse has worked full-time for the past 16 years for a regional transportation company. He states that taking time off from work to attend his son's legal obligations imposed by a juvenile court has strained his income and his ability to provide for his family. A letter from his employer confirms that the applicant's spouse has been taking time off from work "to manage his family responsibilities" and is therefore unable to meet his work responsibilities. Moreover, the applicant's spouse financially assists the applicant in Mexico, but now he is concerned that he cannot continue to financially support two households. The record demonstrates that his savings have been steadily decreasing, he has obtained substantial loans to supplement his income, and he charges the applicant's medical care to a credit card. He also expresses concerns that he would be unable to obtain employment if he relocates to Mexico because of his age and his lack of contacts there.

The applicant's spouse states that being separated from the applicant also has been emotionally difficult for him. He states that it has been stressful for him to manage his family without the applicant. His teen-age son was arrested for a criminal offense and was placed on probation. The applicant's spouse was required to perform community services with his son pursuant to a court order and pay restitution. A counselor visits his home on a monthly basis, which causes him stress. He feels depressed and anxious. He has difficulty, sleeping thinking about his family's well-being. [REDACTED] states that the applicant's husband's personality test reveals "depression, anxiety and stress." He recommends therapy, but the applicant's spouse states that he cannot afford it. The applicant's spouse also is concerned about the applicant, who is being medically treated for major depression and anxiety in Mexico. [REDACTED] indicates that the cause of her condition is their family's separation, and her anxiety is caused by the violence in Ciudad Juarez, where she lives. The applicant's spouse also is concerned about his own and his family's safety in Mexico. He travels weekly to Ciudad Juarez to visit the applicant and to bring her food, money, and other items she needs. He fears for his life. In addition to safety concerns, he worries about his children's education and their ability to adapt to a different lifestyle in Mexico, because they are not proficient in Spanish.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse is experiencing extreme hardship resulting from his separation from the applicant. In reaching this conclusion, we note the cumulative effect of the applicant's spouse's emotional and financial hardships. The record demonstrates that stress caused by their separation, coupled with the applicant's spouse's concerns about the applicant's safety in Mexico and the stress associated with his son's legal issues, have negatively affected his mental health. Furthermore, the applicant's depression in Mexico worries her spouse and also has affected him financially. The applicant's spouse has financial difficulties and now depends on substantial loans to provide for his family. He cannot afford psychological treatment for himself and charges the applicant's treatment to a credit card. The AAO concludes that, considering the evidence in the aggregate, the applicant's spouse is experiencing extreme hardship resulting from his separation from the applicant.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Mexico. The AAO notes the applicant's spouse's safety concerns in Mexico are corroborated by the U.S. Department of State in its most recent travel warning for Mexico, updated on November 20, 2012. According to that report, roadblocks by transnational criminal organizations in various parts of Mexico in which both local and expatriate communities have been victimized have increased. The report mentions particular concerns for Ciudad Juarez, where the applicant lives, because it has one of the highest murder rates in Mexico, and it recommends that non-essential travel to the state of Chihuahua be deferred. The applicant's spouse also is concerned about their children's ability to function in Mexico because they are not proficient in Spanish. He is gainfully employed in the United States and is concerned about his ability to find employment in Mexico because of his age. The AAO concludes that, considering the evidence in the aggregate, the applicant's spouse would experience extreme hardship should he relocate to Mexico to be with the applicant.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that her spouse would face extreme hardship if the applicant's waiver request is denied. The applicant has established statutory eligibility for a waiver of her inadmissibility under section 212(a)(9)(v) of the Act.

In that the applicant has established that the bar to her admission would result in extreme hardship to her qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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

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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, 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 factor in the present case is the applicant's unlawful presence in the United States, for which she now seeks a waiver. The mitigating factors include the applicant's U.S. citizen spouse and stepchildren, the emotional hardship she is currently experiencing, the extreme hardship to her spouse if the waiver application is denied, her lack of a criminal record, and statements from the applicant's spouse and stepson attesting to her good character.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted.

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. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.