



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JAN 30 2013 OFFICE: CIUDAD JUAREZ (ANAHEIM)

IN RE:

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:

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".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Ciudad Juarez, Mexico (Anaheim) and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects the applicant is a native and citizen of Mexico who entered the United States without admission in February 2004. He remained in the country until December 2, 2010. The applicant was found to be inadmissible to the United States under 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 for more than one year and seeking readmission within ten years of his departure from the United States. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He 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 live in the United States with his wife.

In a decision dated October 11, 2011, the director concluded the applicant had failed to establish that a qualifying relative would experience extreme hardship he were denied admission into the United States. The waiver application was denied accordingly.

Counsel asserts on appeal that the applicant's wife will experience extreme emotional, financial and physical hardship if the applicant is denied admission into the United States. To support these assertions counsel submits letters from the applicant's wife and family members, psychological evaluations for his wife, medical evidence for his father-in-law, financial documentation, photographs and citizenship and identification information for family members. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B)(i) of the Act provides in pertinent part that any alien 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.

In the present matter, the record reflects the applicant entered the United States without admission in February 2004, and he departed the country on December 2, 2010. Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. The applicant was unlawfully present in the United States for over one year, and he has not been absent from the country for less than ten years. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides in pertinent part:

Waiver.-The Attorney General [now, Secretary, Department of Homeland Security "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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez-Morales*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), 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. 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).

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, 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.

The applicant’s U.S. citizen spouse is his qualifying relative under section 212(a)(9)(B)(v) of the Act.

The applicant’s wife indicates in letters that she came to the United States as a child and that her parents, siblings and extended family live in the United States. She and the applicant married in 2009, they have a home together, and she depends on their joint incomes to pay their expenses and to help her family financially. Since the applicant’s departure, she is in debt, borrowing money to pay her expenses, and she has moved back to her parents’ house. Additionally, she states that she has worked at a daycare facility for over 6 years, and she must be able to maintain her focus in order to care for 26 children. Her ability to concentrate has suffered due to the applicant’s immigration problems, she cries all of the time and she is under treatment for severe depression. She worries about the applicant’s health in Mexico due to his poor living conditions and poor water sanitation. She also worries that the applicant could be harmed in Mexico due to high crime and violence in Zacatecas, where he lives. In addition, she worries that she would face unsanitary and unsafe living conditions if she were to relocate to Mexico and that the medical facilities there are inferior. Also, her father suffers from hypertension and other medical ailments, and she fears his condition will be aggravated by concerns about her health and well-being and her being unable to care for him if she lived in Mexico.

Letters from family and friends attest to the applicant’s good character, and attest to hardship the applicant’s wife is experiencing due to the applicant’s absence.

Psychological reports reflect the applicant’s wife was diagnosed on November 29, 2010, with generalized anxiety disorder due to anxiety and depression related to the possibility of a separation

from the applicant. Her symptoms worsened after the applicant departed the United States, and she was diagnosed on April 20, 2011, with major depression and generalized anxiety disorder due to her separation from the applicant, with the likelihood that her symptoms would worsen with continued separation from the applicant. An October 25, 2011 psychological evaluation diagnoses the applicant's wife with major depression and panic disorder. The therapist notes the applicant's wife has become sadder and thinner and that her symptoms, which "are barely manageable," worsen as her hope for a resolution of the applicant's immigration situation decreases. Moreover, she states that she has withdrawn from her family and her worries interfere with her daily life. He concludes that "she will likely become increasingly more depressed and anxious" if she continues to be separated from the applicant. The psychological reports also describe the somatic effects of applicant's wife's mental and emotional condition, including exhaustion, headaches, back pain, and gastrointestinal issues.

Employment evidence shows the applicant's wife earns between [REDACTED] biweekly as a daycare teacher. Federal tax documents reflect the applicant and his wife had a joint income of \$48,000 in 2009. The record also contains bank statements and utility bills for the applicant and his wife.

A grant deed reflects that the applicant's wife and [REDACTED] added the applicant to the title of their house on June 19, 2010. [REDACTED] states in a November 10, 2010 letter that he is a cosigner on the applicant's house, and a "personal guarantee" promissory note reflects the applicant's wife borrowed [REDACTED] from him. According to the note's terms, she was to begin monthly payments of [REDACTED] on February 1, 2010. The applicant's brother states in letters that he helps the applicant's wife financially with house payments but that he will be unable to continue to do so.

The applicant submits country-conditions evidence that corroborates his wife's statements about high levels of crime and violence in Mexico as well as water shortage issues, and problems with poor water quality and sanitation. The record also contains medical records documenting the applicant's father-in-law's medical conditions, including hypertension, diabetes and cardiac arrhythmia. The evidence establishes that he takes medication for his conditions and that his doctor states he should not experience strong emotional changes or undue stress.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility, if she remains in the United States, separated from the applicant. Several reports, including a Department of State Travel Warning from November 2012, confirm the applicant's wife's concerns regarding unsafe and violent conditions the applicant faces in Zacatecas, Mexico See [http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_5815.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html). Moreover, the evidence establishes the applicant's wife is suffering from major depression, anxiety and panic disorder due to her separation from the applicant and her symptoms are progressively getting worse. The cumulative evidence establishes the applicant's wife will experience extreme emotional hardship if she remains in the United States, separated from the applicant.

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The evidence, considered in the aggregate, establishes the applicant's wife would also experience hardship beyond that normally experienced upon removal or inadmissibility if she relocates to Mexico to be with the applicant. The applicant's wife has lived in the United States since she was an infant and her family lives in the United States. Furthermore, her safety concerns in Mexico are confirmed by country-conditions reports advising that non-essential travel to Zacatecas be deferred and noting that incidents of transnational criminal organization-related violence have occurred throughout the state. See [http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_5815.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html).

The AAO 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(a)(9)(B) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 s/he is excluded and/or 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 unfavorable factors in this matter are the applicant's unlawful entry and his accrual of unlawful presence in the United States between February 2004 and December 2010. The favorable factors are the hardship the applicant's wife would face if he is denied admission into the United States, the applicant's good moral character, and the applicant's lack of a criminal record. The AAO finds that although the immigration violations committed by the applicant are serious in nature and cannot be condoned, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met his burden of proving eligibility for a waiver of his ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. The Form I-601 appeal will therefore be sustained.

**ORDER:** The appeal is sustained.