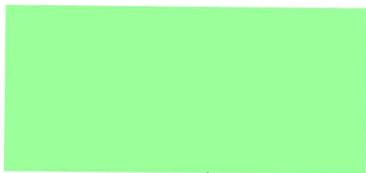


(b)(6)

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



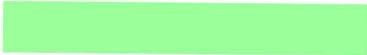
U.S. Citizenship
and Immigration
Services



DATE: JUL 03 2013

OFFICE: LONDON, ENGLAND

FILE: 

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:

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".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, London, England, and was subsequently appealed to the Administrative Appeals Office (AAO), which dismissed the appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying application is approved.

The record reflects that 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 more than one year and seeking readmission within ten years of his last departure from the United States. The record indicates that the applicant is married to a U.S. citizen. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 reside in the United States with his spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See District Director's Decision*, dated September 29, 2011.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the District Director that extreme hardship to a qualifying relative had not been established, as required by the Act. *Decision of the AAO*, dated December 20, 2012. Consequently, the appeal was dismissed. *Id.*

On motion, the applicant presents additional evidence of medical and financial hardship to the applicant's spouse and information on country conditions in Ireland and Mexico. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. As the applicant has submitted new documentary evidence to support his claim, the motion to reopen will be granted.

The record contains the following documentation: statements by the applicant and the applicant's spouse; medical documentation for the applicant's spouse; a psychological evaluation of the applicant's spouse; financial documentation; and country conditions information on Mexico and Ireland. The entire record was reviewed and considered in rendering a decision on the motion to reopen and reconsider.

Section 212(a)(9)(B) of the Act provides, 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.

...

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

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen wife 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-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 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, 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 record indicates that the applicant entered the United States in July 2002 without inspection. In December 2007 the applicant departed the United States. The applicant accrued over one year of unlawful presence between July 2002 and December 2007. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year, and seeking admission within 10 years of his departure from the United States. The applicant does not contest this inadmissibility.

The applicant contends that his spouse will suffer medical hardship if his waiver application is not approved. The applicant’s spouse states that she suffers from gynecological conditions, including cervical dysplasia, which requires frequent monitoring by medical professionals. On motion, the applicant submits medical documentation showing that his spouse had abnormal Pap smears in 2003, that she was treated for human papillomavirus (HPV) in 2012, and that she also has

experienced menstrual disorders. The applicant submits a letter from his spouse's doctor, who states that he has treated the applicant's spouse since she was 16 years old for, among other gynecological conditions, HPV and infections.

The applicant further contends that his spouse will suffer emotional hardship if his waiver application is not approved. The record includes a report of a psychological evaluation dated September 21, 2009, which indicates that the applicant's spouse described suffering from insomnia, chronic tension, and social withdrawal; she was diagnosed with depression. According to a doctor's report dated October 26, 2009, the applicant's spouse developed anxiety, which in the doctor's opinion appears to be related directly to stress caused by the applicant's immigration situation; he concludes that this affects her mental and physical health. On motion, the applicant submits a letter from his spouse's doctor stating that the doctor has renewed a prescription for the applicant's spouse's medication to treat her anxiety and agitation, indicating that the applicant's spouse has been undergoing long-term treatment for her emotional problems.

The applicant also states that the applicant's spouse will suffer financial hardship if the applicant's waiver application is not approved. Financial documentation in the record shows that the applicant's spouse is employed in the United States, and in 2011 she earned an annual salary of \$17,621.93. The applicant submits documentation reflecting that the parents of his spouse previously had to pay for her medical expenses, although a letter from his spouse's current employer indicates that she now has medical coverage through her employment. The applicant also submits evidence to show that his spouse has financially assisted him.

The record establishes that the applicant's spouse is experiencing medical, emotional, and financial hardship. Her medical and psychological conditions are aggravated by the applicant's circumstances and have affected her ability to function. Moreover, she appears unable to manage her financial obligations without her parents' help. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if she remained in the United States without the applicant.

In its previous decision, the AAO noted that the applicant's spouse claimed that she is unable to relocate to Mexico because of drug violence but found no documentation in the record to support this claim. On motion, the applicant submits evidence of the drug violence in Guanajuato, Mexico, where he currently resides, and the drug violence in nearby San Luis Potosi. The U.S. Department of State also has issued a travel warning for Mexico specifically referencing San Luis Potosi, advising citizens to "defer non-essential travel" there and noting that "[a] U.S. government employee was killed and another wounded when they were attacked in their U.S. government vehicle on Highway 57 near Santa Maria del Rio in 2011. Cartel violence and highway lawlessness are a continuing security concern." The warning also describes travel limits and curfews for U.S. government employees traveling to San Luis Potosi. *See Travel Warning-Mexico, U.S. Department of State*, dated November 20, 2012, available on the Internet at http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html.

Based on the evidence in the record, the applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Mexico to reside with the applicant. She was born in the United States and is the only child of her parents, who reside in Little Rock, Arkansas. Additionally, her medical conditions require periodic monitoring. Moreover, his spouse's fears of violent conditions in Mexico, and specifically Guanajuato, where the applicant lives, are corroborated by evidence submitted with the motion. The applicant therefore has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Mexico to reside with him.

The AAO notes that when the applicant filed his Form I-601, he was temporarily residing in Ireland. The record indicates that the applicant is no longer residing in Ireland; he has returned to Mexico. The record does not include evidence that the applicant has legal permission to reside in Ireland. The record further indicates that the applicant's spouse has dual citizenship in the United States and Ireland. The applicant's spouse states that she is unable to receive the medical care that she needs in Ireland, because she does not have health insurance to cover her medical expenses. The applicant's spouse states that while residing in Ireland in 2009, she visited a doctor and was told that because she does not have a medical card she was required to pay for the office visit and medication. Moreover, the applicant lost his job in Ireland and consequently could not afford their housing; his spouse asserts that they could not impose on her extended family members there for assistance, because of her family's economic difficulties. The applicant also submits country-conditions information to corroborate claims about their housing expenses and the poor employment prospects he and his spouse would face in Ireland. Based on the evidence in the record, the applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Ireland.

The AAO thus 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-Moralez, 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 favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse would face if the applicant's waiver application were denied, whether she accompanied the applicant or remained in the United States; and the applicant's apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's unlawful entry and unlawful presence in the United States.

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's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, the motion to reopen will be granted and the application approved.

ORDER: The proceedings are reopened; the underlying application is approved.