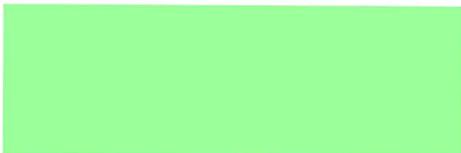


(b)(6)

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



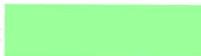
**U.S. Citizenship
and Immigration
Services**



DATE: JUL 18 2013

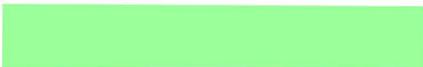
Office: ANAHEIM

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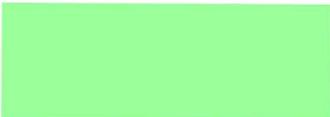
Applicant:



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. § 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 waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 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. He is seeking a waiver of inadmissibility in order to immigrate to the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, June 12, 2012.

On appeal, the applicant provides a brief and additional evidence that a qualifying relative would suffer extreme hardship due to the waiver denial. The record on appeal consists of an updated hardship statement of the applicant's wife, as well as additional psychological and medical documentation. The record contains financial evidence, including W-2, pay stubs, utility bills, medical bills, a loan receipt and remittance receipts; medical evidence, including reports, discharge summaries, and prescription receipts; support statements; birth and marriage certificates; and country condition information.

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.

....

(v) Waiver. - The Attorney General [now the 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 Attorney General (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....

The record indicates the applicant entered the United States without admission or parole in September 2005 when he was 17 years old and remained here until October 2009, when he departed to apply for an immigrant visa. The field office director determined the applicant thereby accrued

unlawful presence from August 3, 2006 (his eighteenth birthday) until his departure, and found him inadmissible for having accrued unlawful presence of one year or more.

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 his child 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 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 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. INS.*, 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.

Regarding hardship from separation, there is extensive documentary evidence that the applicant's wife has experienced emotional hardship from her husband's absence beyond the normal and typical impact of separation from a loved one. A record reflecting that the qualifying relative has caused herself harm on at least three occasions – two of which required hospitalization -- indicates significant difficulty coping with problems. Hospital records show most recently that, after intentionally overdosing on her prescription antidepressant medication, she informed her mother, and received a hospital admission for a weeklong psychiatric observation. An extensive psychological evaluation confirms the hospital discharge summary's report that, as she had previously cut her wrists and injured herself leaping from a moving vehicle, she was under a psychiatrist's care, whose treatment for major depression and symptoms such as insomnia included counseling and prescription medications. The record attributes her psychological problems to the murder of her father when she was young, several instances of childhood sexual abuse, and domestic violence by her stepfather and two previous boyfriends. According to the report,

It is highly doubtful that all of these traumas can ever be completely cured or undone. The best that she can probably hope for is an amelioration of her mental state [...]. She has found significant peace and relief from her suffering through her relationship to her husband

Psychological Evaluation, September 4, 2012.

The psychologist concludes that, while psychotherapy, including individual and family therapy, would have a palliative effect, the qualifying relative is "at high risk for deepening depression [and] suicidal recidivism," if she remains separated from her husband. Although the qualifying relative has been able to visit her husband to ease the emotional pain of separation, these travels have caused her both fear (due to threats by the father of her two children living in Mexico as well as to commonplace violence where her husband lives) and economic hardship. The psychologist also noted, after interviewing the qualifying relative's 3-, 5-, and 7-year-old children who live with her, that each child suffers from an emotional disorder traceable to the applicant's absence, all require professional intervention, and their individual problems represent additional hardship factors with

which their mother is ill-prepared to cope. According to counsel, the qualifying relative's U.S. household includes, besides her three children, her mother and two younger siblings, one of whom is a wheelchair-bound paraplegic with spina bifida, behavioral problems, and a learning disability.

Regarding financial hardship, the record contains no documentation of the qualifying relative's claimed monthly income of about \$1,200, but does reflect that her husband earned over \$30,000 in 2008, his last full year here before returning to Mexico. Although there is no evidence the applicant supported his wife's household before departing the United States, the AAO notes that his wife's claimed income is sufficiently low that any contribution would be helpful and any added cost would be burdensome. Counsel states that the applicant's wife receives food stamps, documentation shows that she and her mother share responsibility for utilities, and receipts establish that the qualifying relative has other fixed costs such as a vehicle loan, insurance, and medical bills. Although the applicant is working on his father's farm in Mexico, remittance receipts substantiate that his wife is providing occasional economic support. The evidence reflects that, whatever the specific help rendered by public assistance, disability payments, and her mother,¹ the qualifying relative would experience a substantial economic benefit were the applicant to resume his prior U.S. employment and no longer require his wife's financial assistance in Mexico.

Documentation on record, when considered in its totality, shows that the applicant's wife is suffering extreme emotional hardship due to the applicant's inability to reside in the United States. Regarding financial details, the AAO recognizes that evidence of the applicant's earning potential before becoming a member of his wife's household indicates he will likely provide financial support to her and her children if he resumes working in the United States. For all these reasons, the cumulative effect of the physical and emotional, as well as financial, hardships the applicant's wife and children will experience due to his inadmissibility rises to the level of extreme. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would suffer extreme hardship beyond those problems normally associated with family separation.

Regarding relocation, the applicant's wife states that she has safety concerns for herself, her husband, and her children, and we note that official U.S. government reporting and country condition information reflect that personal safety is an issue in the part of Mexico where the applicant is living. *See Travel Warning—Mexico*, November 20, 2012. Besides fearing the general danger represented by documented drug cartel-related violence, the applicant's wife reports being threatened with bodily harm by the father of her other two children who is worried that she might assert parental rights that were never resolved before she left an abusive relationship to return to the United States. Counsel notes that an unresolved custody situation involving her five year old son living with her here would prevent him from relocating to Mexico with his mother.

Moving overseas would sever ties with her birthplace, her job, and her support network (including her treatment provides, as well as the mother and two siblings with whom she shares a home). Psychological evidence indicates that the traumatic experiences of the qualifying relative's violent, abusive childhood require her to have access to ongoing treatment, or risk relapsing into a suicidal

¹ Counsel reports that she has obtained work permission, but provides no evidence she contributes earnings.

mindset. According to the psychologist, she and her children have the best chance of receiving needed therapy if they remain in the United States. Regarding the children, the evidence shows that their physical and emotional problems will impair their ability to adapt to a foreign environment, and their problems would represent additional stress and concern for their mother. The AAO thus concludes that, were the applicant unable to reside in the United States due to his inadmissibility, the qualifying relative would suffer extreme hardship by relocating to live with the applicant in Mexico.

Based on the totality of the circumstances, the evidence is sufficient to establish that a qualifying relative would experience extreme hardship by moving to a country where safety threats are a significant concern, job prospects are poor, health care is below U.S. standards and she and her children would experience diminished treatment options for their emotional and physical problems.

The documentation on record, when considered in its totality, reflects the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. 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-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 wife would face if the applicant were to reside in Mexico, regardless of whether she accompanied the applicant or

remained here; the applicant's lack of any criminal record; supportive statements; demonstrated ability to maintain a job; passage of nearly eight years since the applicant entered the country as a minor and over three years since he voluntarily departed. The unfavorable factors in this matter are the applicant's unlawful presence and work without authorization.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the equities involved, including the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility and for consent to reapply for admission, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is granted.