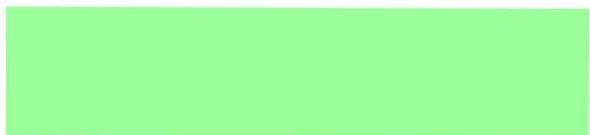


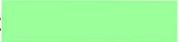


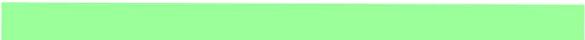
**U.S. Citizenship
and Immigration
Services**

(b)(6)

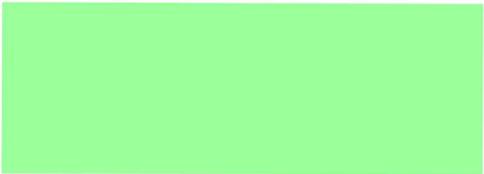


DATE: JUN 28 2013 Office: ANAHEIM, CALIFORNIA

File: 

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:


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

DISCUSSION: The waiver application was denied by the International Affairs Support Branch of behalf of the Field Office Director, Ciudad Juarez, 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 and has U.S. citizen children and grandchildren. 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 August 23, 2012.

On appeal, counsel for the applicant states that evidence submitted on appeal demonstrates the applicant's spouse will experience extreme hardship due to the applicant's inadmissibility and discusses the medical, financial and emotional impacts on the applicant's spouse. *Attachment Form I-290B*, received on September 21, 2012.

The record includes, but is not limited to: counsel's brief; medical statements from the [redacted] pertaining to the medical conditions and treatment of the applicant's spouse; background materials on certain medical conditions pertaining to the applicant's spouse; copies of pharmacy receipts for the applicant's spouse; patient records, medical records and treatment instructions pertaining to the applicant's spouse; a statement from the applicant and the applicant's spouse; school records for the applicant's grandchildren; and pictures of the applicant, her spouse and their family. 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 without inspection in February 1996 and remained until she departed in November 2011. Therefore, the applicant was unlawfully present

in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provision of the Act, until November 2011, a period over one year. She 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 her 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-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 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*, 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.

Counsel asserts on appeal that the applicant’s spouse suffers from Gastroesophageal reflux, hypertension, benign prostatic hypertrophy, thrombocytopenia, vitiligo, fibromyalgia and depression, and that the applicant’s spouse is overwhelmed by his health situation. *Brief in Support of Appeal*, received October 26, 2012. Counsel states the applicant’s spouse resides with his son, two grandchildren and the mother of his grandchildren, and that the applicant’s absence will result in an impact on all of them. Counsel further states that the applicant’s spouse has difficulty working due to his health conditions, and is unable to support the applicant financially or visit the applicant in Mexico. Counsel explains that the applicant’s grandchildren are suffering depression due to the applicant’s departure.

At the outset the AAO notes that the record contains substantial and probative evidence that the applicant’s spouse suffers from a number of health conditions. In a statement dated September 13, 2012, [REDACTED] states that the applicant’s spouse is taking medication for GERD,

hypertension, benign prostatic hypertrophy, fibromyalgia and anxiety. In a statement dated August 30, 2012, [REDACTED] stated that the applicant's spouse has been diagnosed with Vitiligo – a skin condition; Thrombocytopenia; Anxiety; and Hypertension. The record contains a substantial amount of medical records related to treatment and evaluation of these conditions, and the AAO finds it reasonable to accept that the applicant's spouse's ability to work in order to support himself is hindered by his health.

The record corroborates that patients suffering from Vitiligo can experience psychological impacts from the condition's physical symptoms. The record, which includes a medical diagnosis of Vitiligo, photographs of the applicant's spouse and extensive medical documentation related to his treatment for the condition, establishes that the applicant's spouse is experiencing a heightened psychological impact due to his medical conditions. The AAO finds that the medical hardship of the applicant's spouse would compound other elements of hardship, both upon relocation and separation.

In relation to the impacts on the applicant's spouse due to separation, counsel for the applicant asserts the applicant's spouse, children and grandchildren are all dependent on the applicant to provide physical and financial support to the family. The record contains statements from family members, photographs of the applicant with her spouse and other family members, as well as evidence that she and the applicant have been married for long period of time.

The applicant's spouse's assertion that he is emotionally impacted by the applicant having to reside in Mexico is supported by evidence of the conditions in Mexico, including a human rights report and several newspaper articles discussing drug-related violence in the country.

The AAO finds that considered in aggregate, the difficulties the applicant's spouse will face due to separation constitute extreme hardship.

With regard to hardship upon relocation, the AAO finds it reasonable to recognize that the applicant's spouse's health conditions, discussed above, would present a significant burden on him in Mexico. Having to sever the ties with the medical doctors and health practitioners familiar with his history would disrupt the continuity of his care. In this case, the record contains substantial documentation that the applicant's spouse has several serious health conditions, representing an even greater impact if he were to sever his community ties to relocate.

The record demonstrates that the applicant's spouse has significant family ties to the United States as well, including children and grandchildren. Based on the country conditions materials in the record the AAO also finds that the applicant's spouse would likely experience emotional and physical challenges from having to relocate to Mexico, related to both the ongoing drug-related violence and the potential lack of adequate medical treatment for so many health conditions.

The AAO finds that, considered in aggregate, the impacts discussed above are sufficient to demonstrate that the applicant's spouse will experience challenges rising to the level of extreme hardship due to relocation to Mexico. As the applicant has established that a qualifying relative will

experience extreme hardship both upon relocation and separation, it may now consider 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-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 AAO finds that the unfavorable factors in this case include the applicant's entry without inspection and unlawful presence. The favorable factors in this case include the presence of the applicant's spouse, the presence of her U.S. citizen children, the length of time she has been married to her spouse, her spouse's length of residence in the United States and the extreme hardship her spouse would experience due to her inadmissibility. Although the applicant's entry without inspection and unlawful presence are serious matters, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The field office 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.