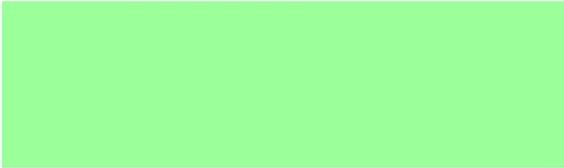


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



(b)(6)



Date: **JUN 28 2013**

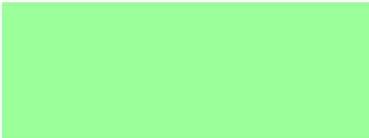
Office: ANAHEIM, CA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 Act for having been unlawfully present in the United States for more than one year. The applicant is the son of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his mother in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant's mother will suffer extreme social, psychological, and financial hardship if the applicant's waiver application were denied. Specifically, counsel contends the applicant's mother suffers from severe domestic abuse from her husband and that she needs her son to deter her husband's beatings. Counsel submits additional evidence of hardship.

The record contains, *inter alia*: a letter from the applicant's mother, [REDACTED] copies of police records; copies of photographs of the applicant and his family; a copy of a Human Rights Watch report for Mexico; a letter from a psychologist; letters from the applicant's former teachers; letters of support; a copy of a mortgage statement and the deed for [REDACTED] house; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

In this case, the record shows, and the applicant does not contest, that he entered the United States without inspection in 1996 as a minor child. The applicant accrued unlawful presence beginning on August 16, 2006, when he turned eighteen years old, until his departure in October 2010. Accordingly, the applicant is 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 one year or more and seeking admission to the United States within ten years of his last departure.

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.

In this case, counsel contends the applicant's mother, [REDACTED] is suffering from severe physical abuse from her husband. According to counsel, the applicant is not the biological son of [REDACTED] husband and he would not physically attack [REDACTED] when the applicant is present. Counsel contends that [REDACTED] and her husband have three U.S. citizen children together who are between six and fifteen years old. Counsel states [REDACTED] is scared to report the abuse because she fears losing custody of her children and cannot financially support them by herself. Counsel states that the applicant's admission to the United States is imperative in order to end the cycle of abuse. According to counsel, [REDACTED] is emotionally devastated by the current situation of being separated from her son and has been diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood. Counsel states she has been unable to sleep at night, has high levels of anxiety, is suffering from depression, and feels guilty for failing her son. In addition, counsel contends [REDACTED] cannot relocate to Mexico to be with the applicant because she would have to relocate her three other children and if her husband relocates to Mexico with her, the abuse would escalate as the Mexican government does not adequately protect victims of domestic violence. Counsel contends all of [REDACTED] siblings and other relatives live in the United States and she has no relatives left in Mexico.

After a careful review of the entire record, the AAO finds that if [REDACTED] remains in the United States without her son, she will suffer extreme hardship. The record contains copies of police call records, corroborating the contention that she is being abused by her husband. The record indicates that two calls were made to police in May and June 2011, reporting that [REDACTED] is too afraid to report the abuse by her husband, that there are children in the house, and that physical injuries were seen on [REDACTED]. The call in June 2011 claims that [REDACTED] is abused every day and that "something needs to be done before he kills her." A letter of support in the record also corroborates the contention that [REDACTED] is being abused and claims that [REDACTED] "needs her son by her side to help her escape from the harmful situation." The AAO acknowledges counsel's contention that the applicant's presence would help his mother, potentially helping to end the abuse. In addition, the

AAO recognizes [REDACTED] statement in the record that she fears for her son's safety in Monterrey, Mexico, and a letter from a psychologist in the record confirms that [REDACTED] has been diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood. The AAO takes administrative notice that the U.S. Department of State has issued a Travel Warning for parts of Mexico and urges U.S. citizens to exercise caution in Monterrey, describing its high level of violence and insecurity. *U.S. Department of State, Travel Warning, Mexico*, dated November 20, 2012. Considering these unique circumstances cumulatively, the AAO finds that the effect of separation from the applicant on [REDACTED] is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if [REDACTED] returned to Mexico to be with her son, she would experience extreme hardship. As stated above, the record contains corroborating evidence showing that [REDACTED] is in an abusive relationship and has three other children. The AAO acknowledges [REDACTED] reluctance to relocate to Mexico with her U.S. citizen children and recognizes her contention that she no longer has any family members remaining in Mexico. [REDACTED] would need to readjust to living in Mexico, a difficult situation made even more complicated given her abusive relationship and fear of being able to support her family on her own. Based on these considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant's unlawful presence in the United States. The favorable and mitigating factors in the present case include: the applicant's significant family ties in the United States, including his U.S. citizen mother, step-father, and three siblings; the extreme hardship to the applicant's mother and siblings if he were refused admission; numerous letters of support stating the applicant has an excellent work ethic and character; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.