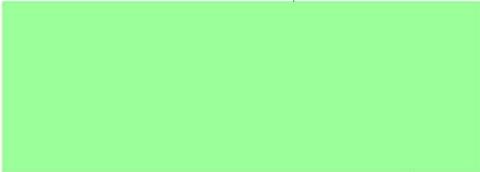


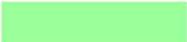


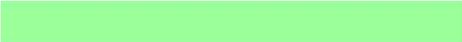
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DATE: **MAR 27 2013**

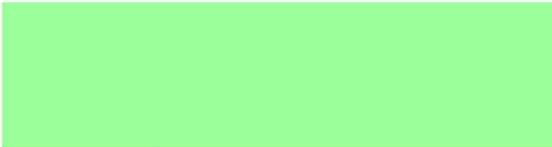
Office: CIUDAD JUAREZ

File: 

IN RE: Applicant: 

APPLICATIONS: 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,

Ron Rosenberg

Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and 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 first entered the United States without inspection in 1992 and remained until November 2011, when he returned to Mexico. When the applicant sought an immigrant visa as the beneficiary of an approved Petition for Alien Relative (Form I-130), he 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 in the United States for one year or more. He is seeking a waiver of inadmissibility in order to live in the United States with his wife and child.

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 Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director, July 27, 2012.*

On appeal, counsel for the applicant contends that the denial decision erred in overlooking the extreme hardships that the applicant's wife is suffering, and will continue to suffer, as a result of her husband's inadmissibility. In support of the appeal, counsel submits a brief referring to documentation previously submitted, including, but not limited to: hardship statements and other support statements; birth, naturalization, and marriage certificates; remittances and other financial records; psychological evaluations of the qualifying relative and her special needs child; school records; and country condition information. The entire record was reviewed and 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.

....

(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...

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's wife contends she will continue to suffer physical, emotional, and financial hardship if the applicant is unable to reside in the United States. The emotional hardship claim focuses on the qualifying relative's assertion that she suffers from depression due to separation from the applicant, as well as from having become a single parent to two children, her nine year old son with the applicant and her 21 year old special needs son from a prior relationship. Based on symptoms including headaches, insomnia, fatigue, inability to concentrate, and frequent crying, a licensed clinical social worker diagnosed her with anxiety and depression. *Psychological Assessment*, August 9, 2012. The LCSW also evaluated her special needs son as suffering from anxiety disorder related to feelings of having been abandoned by his stepfather, the applicant. The evaluator noted that, while the applicant's stepson is chronologically an adult, he has the mental age of an eight year old whose inability to accept the absence of his father causes his mother added stress. The doctor for the qualifying relative and her adult son establishes that the son suffers from Down Syndrome and confirms that emotional problems have likely impacted their existing medical conditions, including high cholesterol (both) and thyroid deficiency (qualifying relative). Documentation that her son's learning disabilities placed him in a high school special education program suggests that he will always be dependent on others.

The applicant's wife reports feeling burdened by concerns about other members of her family. Due to narco-related violence in Mexico, she is worried about her husband's health and about becoming a victim herself during visits with him. Official U.S. government reporting bears out her safety concerns by establishing that criminal activity in both their native states, as well as where the applicant is living during processing of his waiver request, has resulted in advisories to defer non-essential travel. She thus does not feel safe traveling to see her husband to lessen the feelings of loss due to separation. She also expresses desperation at feeling unable to properly nurture two children, particularly her adult son with special needs, and evidence shows that his inability to cope with his stepfather's absence represents hardship to his mother. Despite a record reflecting extensive ties to the community, there appears to be no close relative able to assist with the care of or serve as a role model to the qualifying relative's children.

Regarding financial hardship caused by separation, the record reflects that the applicant's wife has many ongoing expenses, including a car payment and personal loan. Documentation shows that she also supports the applicant through regular remittances to Mexico. Evidence of collection agency communications indicates that she is having financial difficulties. The record contains substantial evidence of the economic burden that maintaining two households represents for the qualifying relative.

For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's wife is experiencing due to her husband's 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.

The qualifying relative contends that she would experience hardship if she relocated abroad to reside with the applicant. Regarding ties to the United States, both of the applicant's wife's children were born and raised here and her child with Down Syndrome receives special educational support tailored to his disability. The evidence suggests that he is also eligible for certain benefits that would not transfer overseas. Coupled with his developmental delays, there is evidence he has a speech impediment and hearing deficiency, which would cause him problems acquiring communication skills in Spanish and adapting to life in Mexico. The record reflects that these difficulties would weigh heavily upon the mother who has cared for him since his birth, when she was 21 years old. The applicant's wife has lived in the United States since arriving in 1988 as a teenager, naturalized in 2008, endured an abusive first marriage, and has developed an extensive support network in the community. She expresses worry about her U.S. citizen children's futures in her home country due the absence of current ties there, lack of U.S. standard healthcare, and current violence.

The applicant's wife claims to fear for the entire family's safety in Mexico, due to ongoing violence:

CRIME: Crime in Mexico continues to occur at a high rate and can often be violent. Street crime, ranging from pick pocketing to armed robbery, is a serious problem in most major cities. Carjackings are also common, particularly in certain areas (see the Travel Warning for Mexico). The homicide rates in parts of Mexico have risen sharply in recent years, driven largely by violence associated with transnational criminal organizations. Ciudad Juarez and other cities along Mexico's northern border have particularly high murder rates.

Mexico—Country Specific Information, U.S. Department of State (DOS), February 15, 2013.

The U.S. Embassy site has published a series of warnings regarding current threats, most recently in November 2012, advising U.S. citizens against non-essential travel to many parts of Mexico, including those areas where the applicant and his wife were born. *See Travel Warning—Mexico*, DOS, November 20, 2012. The AAO notes that U.S. government employee travel to the applicant's native province of Tamaulipas and his wife's native Zacatecas are restricted and, in some circumstances, prohibited.

We observe that the qualifying relative's concerns regarding personal safety are substantiated by U.S. government information on the country. Based on a totality of the circumstances, the AAO concludes the applicant has established that his wife would suffer extreme hardship were she and her children to relocate abroad to reside with the applicant.

Review of 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 and children would face if the applicant were to reside in Mexico, regardless of whether they accompanied the applicant or remained here; the applicant's lack of any criminal convictions;¹ supportive statements;

¹ The record reflects an arrest for a minor traffic offense, but contains no disposition.

passage of more than 20 years since the applicant's parents brought him to this country as a nine year-old; and the applicant's voluntary return to consular process for an immigrant visa. The only unfavorable factor in this matter is the applicant's accrual of unlawful presence.

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

In proceedings for application for waiver of grounds of inadmissibility, 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.