

(b)(6)

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

Date: **MAY 10 2013**

Office: CHICAGO

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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,

*[Handwritten signature]*

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

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 again seeking admission within ten years of her last departure from the United States. The record reflects that the applicant entered the United States with a B1/B2 visitor visa in April 2001 and remained more than one year beyond her authorized stay. The record also reflects the applicant departed the United States in December 2003, subsequently reentering in January 2004 using a B1/B2 visa. The applicant is the spouse of a United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated February 16, 2012.

The record reflects that the decision, though dated February 16, 2012, was not actually mailed until June 6, 2012, and that during the intervening time the applicant had made inquiries into the status of the application. Appeal of the decision was received by USCIS on June 27, 2012, thus the appeal is considered timely filed.

On appeal counsel for the applicant asserts the field office director failed to consider the evidence presented and did not apply the proper standard of proof. With the appeal counsel submits a brief. The record contains affidavits from the applicant, her spouse, and her spouse's parents; a psychological evaluation of the applicant and spouse; financial documentation for the applicant and spouse; country information for Mexico; and letters of support for the applicant. The entire record was reviewed and considered in rendering this decision.

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.

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. 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. *Salcido-Salcido v. INS*, 138 F.3d 1292 (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.

In her brief counsel asserts the applicant’s spouse is an only child who, in addition to his full-time employment, helps his parents run their grocery business where he is responsible for handling merchandise, renewing business licenses, and making repairs to the building. Counsel asserts that the spouse’s father is an alcoholic, which has long caused problems for the family, and that his parents recently were separated for a period of time. Counsel asserts the spouse’s cousin with whom he had a close relationship recently committed suicide and the spouse’s father had a serious auto accident due to being intoxicated and now receives counseling. Counsel asserts the spouse has poor coping mechanisms stemming from his father’s history of alcoholism and relies heavily on the applicant for emotional support and guidance as she is a central figure in maintaining family stability. Counsel asserts separation from the applicant could lead to the spouse’s alcoholism. Counsel asserts that if the applicant returns to Mexico the spouse would need to support two households while contributing to his parents’ mortgage and bills without having the applicant’s income.

Counsel asserts that country information shows continued narcotics-related violence in Mexico, particularly in the applicant’s home state of Durango, where there are thefts, extortions, homicides, and kidnappings. Counsel contends the spouse fears violence in Mexico, particularly in Durango, where he would relocate if he joined the applicant. Counsel contends an uncle of the spouse was kidnapped and remains missing and that the spouse also fears another uncle who has threatened the family if ever revealing that he had raped a young family member. Counsel further asserts the spouse cannot relocate to Mexico because he feels responsible for his parents personally and professionally.

In his affidavit the applicant's spouse states his cousin's 2010 suicide was devastating to their small family and it was followed by his father's serious auto accident, and he needs the applicant for emotional support. The spouse states that in Mexico he has no family for support and no employment opportunity. He states if he relocated to Mexico he would lose his job security and forfeit the career for which he is educated. He states as he is the only child his parents depend on him for the family business, including renewing licenses, handling legal requirements, and making building repairs, thus he fears his parents would lose the business without him. He also states that due to his father's alcoholism his parents need his emotional support. He states that he fears for the applicants' safety in Mexico especially in Durango, and his fear causes him to lose focus on daily tasks and have trouble sleeping. He also fears for her due to a threat from an uncle if the family ever revealed that he had raped his mother's sister when she was 10 years old. The spouse states that the applicant contributes financially now, but in Mexico she would be unable to find employment so he would lose her income while sending funds to her.

In her affidavit the applicant states that although her spouse speaks Spanish, Mexico would be foreign to him since he was born and raised in the United States. She also states his parents business would suffer without him.

In their affidavit the spouse's parents state that he has always helped with the family business and that he is essential in their lives as their only child. They state that without the applicant they would be unable to afford a to hire someone to perform these duties. They would fear for his safety in Mexico due to the high crime rate and they also assert he would have economic difficulty supporting the applicant in Mexico while helping his parents.

The psychological evaluation states that the spouse becomes isolated and uncommunicative during family problems. It states that he has a history of coping poorly with life problems and has abused alcohol in the past, and is thus aware of its dangers. The evaluation notes that the applicant is the central figure in maintaining the family and her spouse relies heavily on her for emotional support as he does not socialize with friends and has no siblings. The evaluation surmises that the spouse does not fully understand the potential consequences on his family of separation from the applicant for a long period of time.

The AAO finds the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Mexico to reside with the applicant. The record establishes that the applicant's U.S. citizen spouse was born in the United States and has few ties to Mexico. He would have to leave his parents who depend on him to operate their business and provide emotional support while being concerned about his and the applicant's safety as well as financial well-being, in light of the lack of employment opportunities, in Mexico. Country information shows a high level of violence in the state of Durango, where the applicant would likely live, and the U.S. Department of State indicates non-essential travel to the state of Durango should be deferred. As such, the record reflects that the cumulative effect of separation from the spouse's family in the United States, safety concerns, and loss of employment were he to relocate rises to the level of extreme for the applicant's spouse. The AAO thus concludes that were the applicant unable to reside in the United States due to

her inadmissibility, her qualifying spouse would suffer extreme hardship if he returned to Mexico with her.

Counsel and the applicant also assert the applicant's spouse will experience extreme hardship due to separation from the applicant. Counsel contends the applicant's spouse has poor coping skills for emotional difficulties and thus relies on the applicant, an assertion supported by the psychological evaluation. The record establishes that the applicant is a central, stabilizing figure for her spouse given his family circumstances and that without her emotional and financial contributions her spouse would suffer extreme hardship. When considered in the aggregate, the documentation provided regarding the qualifying spouse's emotional, psychological and financial hardships demonstrates that the qualifying spouse would suffer extreme hardship if he were to remain in the United States while the applicant resided abroad due to her inadmissibility.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the

ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the hardships the applicant's United States citizen spouse would face if the applicant is not granted this waiver, the applicant's support from the qualifying spouse and his family in the United States, her gainful employment, and her apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's accrual of unlawful presence in the United States.

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 finds that a favorable exercise of discretion is warranted. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.