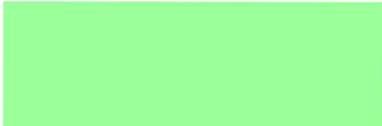




U.S. Citizenship
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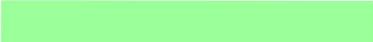


Date: **MAY 15 2013**

Office: NEBRASKA SERVICE CENTER

FILE: 

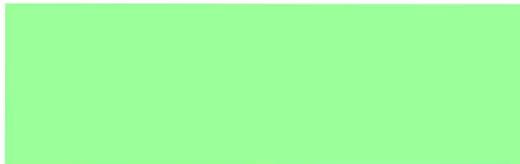
IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 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,

f.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center. 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 his last departure from the United States. The record reflects that the applicant entered the United States without inspection in 1994 and remained until 2011. The applicant is the spouse of a United States lawful permanent resident. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Director* dated August 31, 2012.

On appeal counsel for the applicant asserts that USCIS erred in concluding that the hardships presented did not amount to extreme. With the appeal counsel submits a brief in support of the applicant's waiver application. The record also contains a statement from the applicant's spouse; psychological evaluations of the applicant's spouse; financial documentation; school information for the applicant's sons; and country information for Mexico. 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, 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.

In his brief counsel asserts that the applicant's spouse suffers from anxiety, depression and lack of concentration, as diagnosed by a psychologist, due to separation from the applicant and the pressure of raising four children without him. Counsel asserts the spouse's income is insufficient to support the household, that she sends money to the applicant monthly, and that she has requested food stamps and state benefits to provide for her children. He states the spouse's parents are unemployed with only social security payments as income so they are unable to assist. Counsel further asserts the applicant's spouse would be financially unable to visit the applicant in Mexico while he is inadmissible. Counsel also states that the applicant's spouse fears relocating to Mexico because she has four children and all her close relatives are in the United States. Counsel states that the applicant's spouse has lived in the United States since 1992 and would be unable to adjust to society in Mexico. Counsel asserts the applicant's spouse has little employment experience so would have difficulty finding adequate work in Mexico and cannot depend on the applicant's earnings because he has a lack of specialized skills to find employment. Counsel asserts the applicant's children would be exposed to dangers in Mexico, affecting the spouse's anxiety, and that the spouse would need to place the children in private schools to maintain their level of education and care, adding to expenses while incurring a reduced income. Counsel further contends that Mexico has serious violence and crime plus impoverished living conditions.

In her affidavit the applicant's spouse states she is depressed thinking about their lives ruined and has nightmares that wake her crying. She states it is impossible for her to work full time and care for the children and she fears one son may be autistic. She states she has requested food stamps and cannot depend on her parents for assistance as they are retired with only social security benefits. She states that she fears loneliness without the applicant and for her financial situation as she needs to support him in Mexico. She also fears for his safety in Mexico due to violence there and for that of her children if they relocate to Mexico.

A psychological evaluation conducted over several sessions concluded the applicant's spouse has symptoms of depression, anxiety, insomnia, and high level stress causing her to withdraw from

social activities and have decreased energy along with headaches, poor concentration, and forgetfulness due to separation from the applicant. The psychologist recommended individual counseling and a medical evaluation for use of antidepressant medication.

The AAO finds the record establishes that the applicant's qualifying spouse would suffer extreme hardship as a consequence of being separated from the applicant. The record supports that the applicant's spouse is experiencing emotional hardship without the applicant as she cares for four children, one of whom has speech delays and has been evaluated for autism. Further, the record reflects that the applicant's spouse has limited income with her parents able to offer little assistance and that she is seeking government assistance to support her children while sending money to support the applicant in Mexico. The record thereby demonstrates the necessity of the applicant's financial contributions to the family. When considered in the aggregate, the documentation provided regarding the qualifying spouse's emotional, psychological and financial hardships demonstrate that the qualifying spouse would suffer extreme hardship if she were to remain in the United States without the applicant.

The applicant also demonstrated that his spouse would suffer extreme hardship if she were to relocate to Mexico to reside with the applicant. The applicant's spouse fears violence, inadequate education for her children, and separation from her family in the United States, where she has resided since 1992, if she were to relocate.

The record also establishes that the applicant's children, who are now 16, 10, 8, and 3 years old, are natives and citizens of the United States and the older children in particular are integrated into the lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate to Mexico would constitute extreme hardship to them, and by extension, to the applicant's spouse, the only qualifying relative in this case. Alternatively, were they to remain in the United States, the applicant's spouse would experience hardship due to long-term separation from her children.

As such, the record reflects that the cumulative effect of the qualifying spouse's family ties and length of residence in the United States, the effects of relocation on her children, and her safety concerns were she to relocate rises to the level of extreme for the applicant's spouse if she were to relocate to Mexico.

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 and children would face if the applicant is not granted this waiver, the applicant's support from the qualifying spouse and her family, and his 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.