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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: NOV 27 2013

Office: RENO

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

*f*   
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director, Reno, Nevada, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is sustained.

The record establishes 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 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. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children, born in 2009 and 2011.

The acting field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Acting Field Office Director*, dated April 1, 2013.

In support of the appeal, counsel for the applicant submits the following: a brief, copies of biographical documents pertaining to the applicant and her family, declarations from the applicant and her spouse, employment confirmation letters pertaining to the applicant's spouse, medical and mental health documentation regarding the applicant's spouse, letters in support from friends and family, copies of family photographs, health insurance documentation, a certificate issued to the applicant, financial documentation, and country conditions documentation. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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.

....

(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...

With respect to the acting field director's finding of inadmissibility, the record establishes that in April 2008, the applicant procured entry to the United States with a B-2 visa. She was given permission to remain until October 28, 2008. The applicant remained beyond the period of authorized stay and did not depart the United States until May 23, 2010. The applicant subsequently re-entered the United States as a B-2 nonimmigrant in July 2010 and has not departed. The applicant is inadmissible 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 may also be inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation. The record establishes that the applicant procured entry to the United States with a B-2 nonimmigrant visa in 2008. At the time of this entry, the applicant had been married to a lawful permanent resident of the United States since 2002. Furthermore, at the time of the applicant's re-entry to the United States in 2010 as a B-2 nonimmigrant, she had already been residing in the United States for over two years, was still married to a lawful permanent resident, and had a U.S. citizen child, born 2009. The applicant procured admission to the United States as a nonimmigrant visitor for pleasure even though she was returning to reside in the United States with her spouse and U.S. Citizen child.

The acting field office director did not address whether the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission through willful misrepresentation of her intent when entering the United States in 2008 or 2010. Nevertheless, because the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) also satisfies the requirements for a waiver of inadmissibility under section 212(i), the AAO will not determine whether the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act.

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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. 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 v. I.N.S.*, 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.

The applicant's U.S. citizen spouse contends that he will suffer emotional, physical and financial hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. To begin, the applicant's spouse declares that for the past five years he has been working two full-time jobs in order to support the family. As a result of his schedule, he states that he can only spend Sundays with his daughters. He maintains that the only way he has been able to work two full-time jobs is because his wife takes care of all the household responsibilities and runs all of the household errands. In addition, the applicant's spouse details that even with two full-time jobs, he is barely able to make ends meet, and were his wife to relocate abroad, the cost of child care for his two young daughters would be cost-prohibitive. Further, the applicant's spouse asserts that were his wife to relocate abroad, his young daughters would experience hardship as a result of long-term separation from their mother, thereby causing him hardship. Moreover, the applicant's spouse details that he is suffering from gastritis, anxiety, fear, depression and insomnia as a result of his wife's possible relocation abroad, and his job performance has been affected. He explains that his supervisor has called attention to his job performance and he fears he may lose his job from the stress of his wife relocating abroad. The applicant's spouse contends that a loss of employment would lead to the loss of his and his family's medical coverage. *See Declaration of* [REDACTED] dated May 2, 2013.

With respect to the emotional hardship referenced, counsel has submitted documentation establishing that the applicant's spouse is being treated for fatigue and heartburn as a result of stress, and is showing symptoms of depression, including difficulty sleeping and feeling overwhelmed, anxious, and sad. *See Letter from* [REDACTED] *DO*, dated May 2, 2013. In addition, evidence has been provided establishing that the applicant's spouse is maintaining two full-time jobs. The documentation provided also establishes that the applicant's spouse has been exhibiting signs of preoccupation resulting in a strong decline in his work performance, including lateness to work, forgetfulness in doing certain tasks, and always being tired. *Letter from* [REDACTED] *Building Superintendent*, [REDACTED] dated April 29, 2013 and *Letter from* [REDACTED] [REDACTED] dated April 29, 2013. Further, evidence of the applicant's spouse's financial obligations has been provided. Finally, numerous letters in support have been provided from friends, family members and the applicant's priest noting the hardships the applicant's spouse will experience were his wife to relocate abroad as a result of her inadmissibility. The record reflects that the cumulative effect of the emotional, physical and financial hardship the applicant's spouse will experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. To begin, the applicant's spouse explains that he has been living in the United States for almost two decades

and he no longer has any significant ties in Mexico. The applicant's spouse further explains that his elderly mother lives with him, and were he to relocate abroad, he would not be able to continue caring for her, thereby causing him hardship. Further, the applicant's spouse contends that he would have to quit both of his jobs were he to relocate to Mexico, and finding gainful employment and affordable medical coverage abroad would be difficult. Finally, the applicant's spouse details that he and his family would not be safe in Mexico, as they would stand out as foreigners and become targets for kidnapping. *Supra* at 5-6.

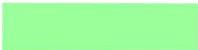
In support, counsel has provided numerous articles about the problematic country conditions in Mexico. In addition, the record includes evidence of the applicant's spouse's gainful employment and his financial obligations in the United States. Further, numerous letters from family members and friends outline the hardships the applicant's spouse would experience were he to relocate to Mexico. Finally, as noted above, the U.S. Department of State has issued a Travel Warning for Mexico, and in particular, portions of [REDACTED] the applicant's birth place. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

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 he 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, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and

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*NON-PRECEDENT DECISION*

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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 U.S. citizen spouse and children would face if the applicant were to relocate abroad, regardless of whether they accompanied the applicant or remained in the United States; community ties; support letters; the payment of taxes; certificate issued to the applicant for completing ESL instruction; church membership and involvement; and the apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's use of a nonimmigrant visa to resume residence in the United States, the failure to depart timely when her nonimmigrant stay expired, the applicant's placement in removal proceedings and periods of unlawful presence while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, the appeal is sustained.

**ORDER:** The appeal is sustained.