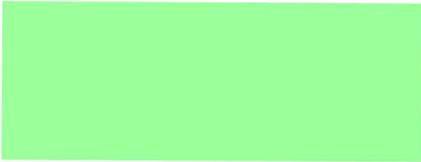




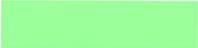
U.S. Citizenship
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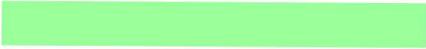
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DATE: OCT 02 2013

OFFICE: ANAHEIM

FILE: 

IN RE: 

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:

SELF-REPRESENTED

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 International Adjudications Support Branch of behalf of the Field Office Director, Ciudad Juarez, Mexico and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the record established the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated April 17, 2012.

On appeal, the applicant's spouse asserts that she is suffering extreme emotional, medical, and financial hardship in the absence of the applicant. The applicant's spouse further asserts that she cannot relocate to Mexico because she belongs in the United States, has her life here, and fears the country conditions in Mexico.

In support of the waiver application and appeal, the applicant submitted identity documents, letters from the applicant's spouse, medical and psychological documentation concerning the applicant's spouse, financial documentation, letters of support, family photographs, and background information concerning medical conditions and country conditions in Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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.

....

- (v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant entered the United States without admission or parole in February 2003 and departed the United States in August 2012. Accordingly, the applicant accrued over one year of unlawful presence in the United States and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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*, 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.

The applicant is a 41-year-old native and citizen of Mexico. The applicant’s spouse is a 55-year-old native of Honduras and citizen of the United States. The applicant currently resides in Mexico and his spouse resides in [REDACTED] Utah.

The applicant’s spouse asserts that she is experiencing financial hardship due to separation from the applicant and is handling many bills and expenses on her own. The record reflects that the applicant’s spouse is employed by [REDACTED] and Subsidiaries and works on a sewing machine. The record does not indicate whether the applicant was employed at the time of his departure from the United States. It is noted that the applicant’s Form G-325, signed October 1, 2012, states that the applicant was unemployed. The applicant’s spouse asserts that she has been forced to discontinue her physical therapy due to her financial hardship. However, it is noted that the record does not contain financial documentation indicating that the applicant’s spouse has been unable to maintain her financial obligations since the departure of the applicant.

The applicant’s spouse asserts that she has been suffering from depression and medical ailments in the absence of the applicant. The applicant’s spouse contends that she is worried about the applicant’s safety in Mexico because he has been assaulted and robbed twice during his employment as a bus driver. It is noted that the record does not contain any supporting documentation such as a police report for these alleged incidents; the applicant’s spouse asserts that the applicant did not report the crime in fear of retaliation.

The applicant's spouse asserts that she previously suffered through two horrible relationships, with physical abuse, and that the applicant is an amazing husband who is her reason for living. The applicant's spouse contends that her depression is also affecting her blood pressure levels. The record contains medical documentation stating that the applicant's spouse has been diagnosed with elevated blood sugar, hypertension, and ongoing hand pain. The medical documentation further states that the applicant's spouse would benefit from assistance and support at home.

The record also contains two documents concerning the applicant's psychological condition. The evaluation dated July 10, 2012 states that the applicant's spouse was physically abused by her first two husbands and diagnoses her with post-traumatic stress disorder. The evaluation also diagnoses the applicant's spouse with major depressive disorder, severe without psychotic features. The second letter concerning the applicant's spouse's psychological state, dated May 9, 2013, states that the applicant's spouse has been receiving biweekly therapy since her evaluation and has deteriorated significantly since the applicant's departure. The letter states that the applicant's spouse, since separation from the applicant, has been losing hair, suffering panic attacks, and experiencing hopelessness and suicidal ideation. In the aggregate, there is sufficient evidence in the record to show that the applicant's spouse is suffering from a level of hardship due to separation from the applicant that is beyond the common results of inadmissibility or removal of a spouse.

The applicant's spouse asserts that she cannot relocate to Mexico because she is unfamiliar with and fearful of the country and would leave behind her ties and benefits in the United States. It is noted that the applicant's spouse is a native of Honduras who asserts that she has never even visited Mexico. The applicant's spouse contends that she would fear for her safety if she resided in Mexico. As previously noted, the applicant's spouse asserts that the applicant has been the victim of crime in Mexico. It is noted that there is no information concerning the region of Mexico in which the applicant currently resides. It is also noted that the applicant stated that his parents reside in San Lorenzo and the U.S. Department of State travel warning for Mexico, dated July 12, 2013, does not contain warnings for this particular area.

The applicant's spouse asserts that she has family and longstanding ties in the United States that she would be forced to abandon upon relocation to Mexico. The applicant's spouse asserts that she is close to her four children and three siblings who reside in the United States. The applicant's spouse contends that she loves her family very much and separation from them would be devastating and contribute to her depression. The record contains a letter of support submitted on behalf of the applicant from one of the applicant's spouse's children. The applicant's spouse also asserts that, upon relocation, she would lose her employment and medical insurance. The record reflects that the applicant's spouse has been employed with [REDACTED] and Subsidiaries from March 2005 to the present, for over eight years. The record also reflects that the applicant's spouse has been diagnosed with medical conditions including hypertension, for which she will likely require lifelong medication. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, if she were to relocate to Mexico, would rise to the level of extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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 her 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.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Morales*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin*, *supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin*, *supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Morales at 300.

In *Matter of Mendez-Morales*, 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 section 212(h)(1)(B) 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 include the extreme hardship the applicant's spouse would experience whether she remained in the United States, separated from the applicant, or accompanied the applicant to Mexico; and letters of support evidencing the applicant's ties to the community. The unfavorable factor in this matter is the applicant's accrual of unlawful presence in the United States.

Although the applicant's violations of immigration cannot be condoned, the positive factors in this case outweigh the negative factors. 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 of the applicant's Form I-601 denial will be sustained.

ORDER: The appeal is sustained.