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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090

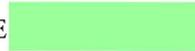


U.S. Citizenship  
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Services

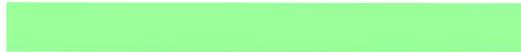


DATE: OCT 17 2013 Office: CIUDAD JUAREZ, MEXICO

FILE

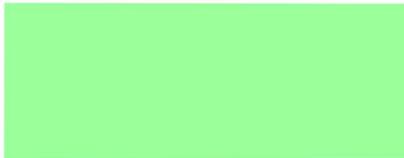


IN RE:



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:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico. 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 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 for one year or more and seeking readmission within 10 years of her last departure. The applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated May 20, 2013.

On appeal, counsel asserts that the Field Office Director did not consider the evidence in the aggregate and abused her discretion in assessing the evidence. *Form I-290B, Notice of Motion or Appeal*, received June 21, 2013. Counsel also asserts that the applicant and his spouse were denied equal protection rights. Constitutional issues are not within the appellate jurisdiction of the AAO; therefore this assertion will not be addressed in the present decision.

The record includes, but is not limited to, counsel's brief, statements from the applicant's spouse, a psychosocial evaluation of the applicant's spouse, financial records, country-conditions information about Mexico, information about the applicant's spouse's late brother, and articles about the benefits of marriage. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

.....

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

The record reflects that applicant entered the United States without inspection in April 1999 and departed the United States in December 2009. The applicant accrued unlawful presence during this period. The applicant therefore is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of her December 2009 departure from the United States. The applicant does not contest her inadmissibility.

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 AAO will first address hardship to the applicant’s spouse if he relocates to Mexico. Counsel states that the applicant’s spouse’s mother, sisters, children and grandchildren live in Texas; he has had the same job for fifteen years; and he also owns a small business and a home. Counsel also asserts that Tropical Storm Manuel hit the town of [REDACTED] on September 15, 2012<sup>1</sup>; the storm became Hurricane Manuel on September 18; the applicant’s home was destroyed by the storm; and the applicant is currently sleeping on the floor of a friend’s place of residence.

The applicant’s spouse states that he cannot move to Mexico because he does not speak Spanish; he works full-time in the window business; he has three children and three grandchildren; he has bought a home; and he was poor growing up and fears becoming poor again due to lack of jobs in Mexico. The applicant’s spouse mentions poor and unsafe conditions that he has seen in Mexico during his visits. The applicant’s spouse also states that the applicant lives in [REDACTED] her house was flooded in the hurricane; and she is homeless and living with a friend. The applicant also details the damage to her house from Hurricane Manuel.

The record includes a mortgage statement for the applicant’s spouse’s home and a letter from his employer verifying employment since August 1, 1997. Additionally, the record reflects that the applicant resides in [REDACTED] and that her home was severely damaged, as shown in photographs of the applicant’s home taken after the hurricane. The record also includes an article detailing the drug-related violence in [REDACTED] Mexico. The AAO notes the July 12, 2013, U.S. Department of State Travel Warning for Mexico, advises U.S. citizens to “exercise caution and stay within tourist areas. . . . In [REDACTED], defer non-essential travel to areas further than 2 blocks inland of the [REDACTED]

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<sup>1</sup> The AAO notes that Tropical Storm Manuel occurred in September 2013. The year mentioned by counsel appears to be a typographical error.

which parallels the popular beach areas.” The State Department travel warning also states that ‘ ’s murder rates increased dramatically since 2009; in response, in 2011 the Government of Mexico sent additional military and federal police to the state to assist State security forces in . . . combating organized crime and returning security to the environs of popular tourist areas.”

The record reflects that the applicant’s spouse has family ties to the United States, although most of the claimed family ties have not been documented. The record also includes evidence of her spouse’s financial ties to the United States in the form of a home mortgage and long-term employment. The record reflects that there are documented safety concerns in . The record reflects that the applicant’s house was severely damaged by Tropical Storm and Hurricane Manuel. Based on the totality of the hardship evidence presented, the AAO finds that the applicant’s spouse would experience extreme hardship if he relocated to Mexico.

The AAO will now address hardship to the applicant’s husband if he remains in the United States. The applicant’s spouse states that he has been depressed since the applicant departed; he loves her with all of his heart; she is his whole world; he has taken a side job so he can support her but is now able to visit her only a few days a year; and he works 12 hours a day, 7 days a week to support himself and her. The applicant’s spouse states that he worries about the applicant’s health and safety in Mexico, he does not sleep but a few hours and he prays that she is okay; a drug lord has taken over her neighborhood, where people are being shot and killed; she cannot go outside; and his brother was killed in April 2013 and he does not want the applicant taken from him. He states that he has visited the applicant and seen that she does not have running water or air conditioning in Mexico and her roof is leaking. As mentioned, he also states that her house was flooded by a hurricane and she is homeless and living with a friend. Moreover, she cannot find work and he sends her money. The record includes evidence of money transfers from the applicant’s spouse to the applicant over a period of a few months in 2012 of approximately \$300 each.

The applicant’s spouse’s sisters, daughter and niece detail the positive impact that the applicant has had on the applicant’s spouse and her relationship with him and his family.

According to a licensed professional counselor who evaluated the applicant’s spouse, he is suffering from “a few” major symptoms of depression, including loss of pleasure, loss of energy, difficulty sleeping and fatigue; he is very dependent on the applicant for companionship; and his emotional condition will worsen if separation from the applicant continues. The applicant’s spouse was diagnosed with an adjustment disorder.

The record includes articles about the emotional, financial and health benefits of marriage. The record also includes corroborating documentation of the applicant’s spouse’s brother’s death.

The record reflects that the applicant’s spouse would experience significant emotional hardship without the applicant. The record reflects that there are documented safety issues in . and that the applicant’s home was severely damaged by Tropical Storm and Hurricane Manuel. The record includes evidence of financial hardship. Based on the totality of the hardship factors

presented, the AAO finds that the applicant's spouse would experience extreme hardship if he remained in the United States without the applicant.

Considered in the aggregate, the applicant has established that her spouse would face extreme hardship if the applicant's waiver request is denied.

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.

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-Moralez*, 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-Moralez* 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 (citation omitted).

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 applicant's U.S. citizen spouse, extreme hardship to her spouse, the lack of a criminal record and positive statements in support of her character. The unfavorable factors include the applicant's entry without inspection and unlawful presence. Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The appeal is sustained.