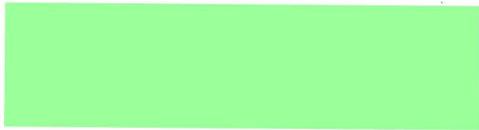




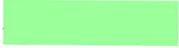
U.S. Citizenship  
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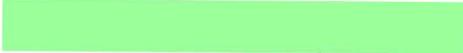
(b)(6)



DATE: **SEP 13 2013**

OFFICE: NEBRASKA SERVICE CENTER

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, Nebraska Service Center, and appealed to the Administrative Appeals Office (AAO). The appeal was summarily dismissed. The AAO will sua sponte reopen the matter. The previous decision of the AAO is withdrawn. The appeal will be sustained.

The record establishes that the applicant is a native and citizen of Mexico who entered the United States without inspection in 1991 and did not depart until November 2011. 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. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse.

The director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, August 31, 2012.

On April 22, 2013, the AAO summarily dismissed the applicant's appeal, finding that the applicant's appeal failed to identify any erroneous conclusion of law or statement of fact in the director's decision. *Decision of the AAO*, dated April 22, 2013. It has now come to the attention of the AAO that between the time the appeal was submitted by counsel in September 2012 and when the AAO issued its decision to summarily dismiss the appeal in April 2013, counsel submitted a brief and documentation in support of the applicant's appeal. The AAO will thus sua sponte reopen the matter at this time.

On appeal, counsel for the applicant submits the following: a brief; medical and employment documentation pertaining to the applicant's spouse; a psycho-social evaluation of the applicant's spouse; evidence establishing money transfers from the applicant's spouse in the United States to her husband in Mexico; and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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...

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 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 she will suffer emotional and financial hardship were she to continue to reside in the United States while the applicant remains abroad due to his inadmissibility. The applicant’s spouse declares that she has been married to her husband for over a decade, he is a good husband and provider, and long-term separation from him is causing her hardship. She notes that she is not eating right and is having many sleepless nights thinking of her husband’s immigration situation. In addition, the applicant’s spouse details that her husband had a good job with a steady income when he was residing in the United States but as a result of his relocation abroad, she is having difficulty making ends meet. She notes that she is unemployed at this time as a result of being laid off and is behind on numerous payments. See *Letter from* [REDACTED] dated February 1, 2012.

With respect to the emotional hardship referenced, counsel has submitted a psycho-social evaluation from [REDACTED]. [REDACTED] explains that the applicant’s spouse has been diagnosed with Major Depressive Disorder and has been prescribed Paxil, an antidepressant, by her physician. [REDACTED] concludes that the applicant’s spouse’s symptoms are the result of separation from her husband and the resulting tensions and stressors that have arisen. See [REDACTED]

[REDACTED] dated May 25, 2012. Additionally, letters in support have been provided noting the hardships the applicant's spouse is experiencing as a result of her husband's inadmissibility.

As for the financial hardship referenced, documentation has been provided establishing loans totaling in the thousands of dollars the applicant's spouse has taken out since her husband's departure from the United States. A letter from their landlord notes that they were always punctual with their rent payments, but since the applicant's relocation abroad the applicant's spouse has not been able to pay rent. *See Letter and Translation from [REDACTED]*, dated March 11, 2012. In addition, evidence has been provided establishing money transfers by the applicant's spouse to her husband in Mexico to help support the applicant financially. Moreover, counsel has provided documentation establishing that the applicant's spouse was laid off in September 2012. *See [REDACTED]*, dated September 21, 2012. Furthermore, evidence has been provided establishing the applicant's specific financial contributions to the household prior to his departure from the United States, earning over \$20,000 per year. *See Form 1040, U.S. Individual Income Tax Return for 2011 and Letter from [REDACTED]*, dated February 2, 2012. Finally, as referenced by counsel, the AAO notes that the U.S. Department of State has issued a Travel Warning for Mexico, and in particular, Michoacán, the applicant's birth place, due to violence by Transnational Criminal Organizations (TCOs). *Travel Warning-Mexico, U.S. Department of State*, dated July 12, 2013.

The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse is experiencing 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 his 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. The record reflects that the applicant's spouse entered the United States in 1980, more than thirty years ago. She has significant community, employment and family ties in the United States, including the presence of an elderly mother, two siblings and five children from a previous relationship, all of whom reside in California. Finally, as noted above, the U.S. Department of State has issued a Travel Warning for Michoacán, the applicant's birth place. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his 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 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 would face if the applicant were to remain abroad, regardless of whether she accompanied the applicant or remained in the United States, community ties, long-term gainful employment in the United States, the payment of taxes, support letters, and the apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's entry without authorization and unlawful presence and employment 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 his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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.