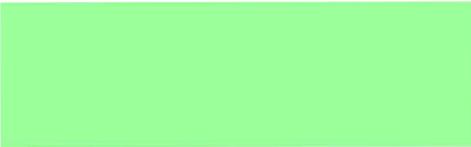


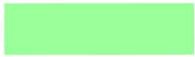


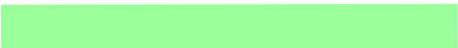
**U.S. Citizenship
and Immigration
Services**

(b)(6)



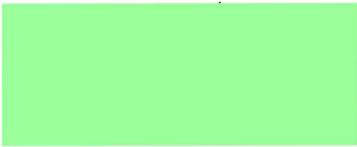
DATE **SEP 25 2013** OFFICE: LAS VEGAS, NV

FILE: 

IN RE: APPLICANT: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)

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 Field Office Director, Las Vegas, Nevada, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The AAO rejected a following motion as untimely. *See AAO Decision*, July 5, 2013. Additional information provided by counsel has confirmed that the motion was timely filed. Based on this new information, the AAO will reopen the motion *sua sponte*. The motion will be granted, the prior AAO decision withdrawn, and the underlying appeal sustained.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 in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See decision of Field Office Director* dated June 18, 2012. The AAO dismissed a subsequent appeal, finding the record did not contain sufficient evidence of extreme hardship to her U.S. citizen spouse. *See AAO decision on appeal*, February 26, 2013. The applicant's first motion was rejected as untimely filed. *See AAO's decision on motion*, July 5, 2013.

On motion, counsel submits a brief in support, financial documents, a statement from the applicant's spouse, letters from family and friends, birth certificates, letters from medical services providers, documentation on employment and medical expenses in Mexico, and articles on country conditions in Mexico. In the brief, counsel contends that evidence of record indicates the spouse's expenses exceed his income, and there is sufficient documentation on medical conditions which will cause the spouse hardship upon separation. Counsel additionally claims the applicant has supplemented the record with sufficient documentation to show her spouse would experience financial, medical, safety-related, and other hardship upon relocation to Mexico.

The record includes, but is not limited to, the documents listed above, statements from the applicant and her spouse, financial and medical records, a psychological evaluation, educational records, letters from family and friends, evidence of birth, marriage, divorce, residence, and citizenship, other applications and petitions, a police report, and photographs. The entire record was reviewed and considered in rendering a decision on the motion.

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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(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 record reflects that the applicant was admitted to the United States in 2000 pursuant to her border crossing card, for a period not to exceed six months. She admitted she departed the United States on three or four occasions, and that her last departure was in 2009. Inadmissibility is not contested on appeal. The AAO therefore finds that the applicant accrued more than one year of unlawful presence and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

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 (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.

Counsel contends on motion that the applicant has submitted sufficient evidence to demonstrate that her spouse would experience financial hardship upon separation. The applicant submits copies of household bills in support. Counsel claims that the documented expenses, along with \$300 a month for gas and \$500 a month for groceries, exceed the spouse’s documented income. Counsel moreover states that in addition to those household bills the spouse gives his mother \$150 a month. Bank statements are submitted to reflect automatic transfers. Counsel moreover asserts that paying for a babysitter for 50 hours per week at Nevada’s minimum wage would cost an additional \$412.50 a week, further exacerbating the spouse’s financial difficulties. With respect to the spouse’s mother, counsel states that as the spouse cannot pay the minimum wage for a babysitter, he certainly cannot afford to pay a certified nursing assistant \$12 an hour to take care of his mother when she is present in the United States. A physician in Mexicali, Baja California, Mexico indicates in a letter that the mother has Non Hodgkin’s lymphoma, as well as hypertension, diabetes, and glaucoma, and that because of her medical conditions she needs constant care.

Counsel moreover asserts that the new letters from the son [REDACTED] medical services providers clearly set forth his illnesses, the symptoms, the medicine he is taking, and emphasize the importance of the applicant's presence in his treatment. A physician assistant indicates in a letter that the son has allergic rhinitis and reactive airway disease, and that his symptoms include cough, wheezing, shortness of breath, chest tightness, runny nose, sneezing, nasal congestion, post nasal drip, itchy nose, and itchy throat. The physician assistant lists the medications the son takes, and states that if he is not compliant with his treatment he may end up in the emergency room or otherwise hospitalized. The physician assistant adds that the applicant has assisted by helping her son take medications, keeping a daily diary on his symptoms, and bringing him to follow-up visits as needed. The letter concludes by indicating that it is important for the son to continue having the applicant's support in taking his medications and noting his symptoms and overall health. A pediatrician notes in a letter that the son has frequent asthma flare-ups, and that it would be beneficial if he and the applicant could live in the United States so he receives appropriate medical care. Counsel contends that the applicant's spouse will not be able to afford the medical care without his insurance.

Counsel asserts that the spouse will experience financial, medical, safety-related, and other hardship upon relocation to Mexico. Counsel claims that medical care in Mexico for the son will be unaffordable. A price quotation from [REDACTED] is submitted in support. Counsel moreover states that the family's health insurance, obtained through the spouse's U.S. employer, will not be available once the spouse and his family relocate to Mexico. Counsel additionally contends that the spouse, who is 46 years old, will not be able to meet his financial obligations if he moves to Mexico, as cook helpers such as him only earn \$323.77 a month, and they mostly only hire people who are between 20 and 40 years old. An advertisement for a position and a job contract is submitted on motion. Counsel moreover states that the spouse would face dangerous country conditions in Mexico, as he has family and friends who live near his mother and the applicant's towns, and they have experienced violence and threats. Letters are submitted in support.

The applicant has demonstrated that her spouse would experience financial hardship upon separation. The applicant's newly submitted evidence on income and household expenses, including the \$150 a month the spouse provides to his mother, establishes that her spouse would be unable to meet his current financial obligations, and pay for additional child care expenses in the event of the applicant's departure. Furthermore, given the spouse's work schedule, the applicant has shown that his spouse will have difficulty with raising his three children and taking care of his mother, who has several serious medical conditions, without the applicant's presence and support. The AAO also notes that, as on appeal, the record reflects that the applicant's spouse suffers from anxiety due to the applicant's immigration situation, as well as other emotional issues.

The AAO therefore finds there is sufficient evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, medical, psychological / emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico without her spouse.

The applicant has also established that her spouse would experience extreme hardship upon relocation to Mexico. The record reflects that if the spouse returned to Mexico, where he was born, he would have to relinquish his current employment, which he has held since 1991, as well as his employment benefits, which include health insurance for his family. Documentation submitted on motion indicates the applicant's spouse would have difficulty finding adequate employment as a cook helper in the area where his mother has a house. Furthermore, a price quotation from a pharmacy in Mexico indicates that paying for the son's medications will not be affordable on a cook helper's income. The applicant has also submitted evidence indicating that close family members and friends have been subject to violence and threats in Mexicali, Mexico, where his mother resides, and Sonora, Mexico, where the applicant is from. Furthermore, the record reflects that the applicant's spouse has lived in the United States for almost 30 years, and that he has community ties.

In light of the evidence of record, the AAO finds the applicant has established that her spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

Considered in the aggregate, the applicant has established that the applicant's 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 negative factors include the applicant's unlawful presence in the United States. The positive factors include the extreme hardship to her U.S. citizen spouse, some evidence of hardship to her children, her good moral character as stated in letters from family and friends, and her lack of a criminal record.

Although the applicant's violation 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. Accordingly, the motion is granted, and the prior AAO decision is withdrawn.

ORDER: The motion is granted, the prior AAO decision is withdrawn and the underlying appeal sustained.