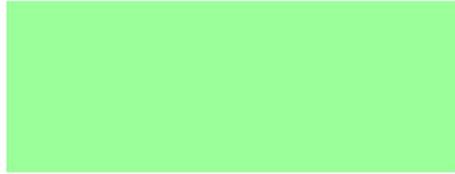


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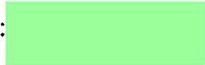
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



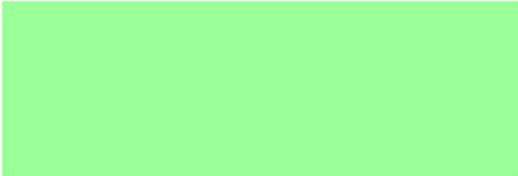
DATE: JAN 24 2014 OFFICE: MONTERREY, MEXICO

File: 

IN RE: Applicant: 

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,


for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Monterrey, Mexico denied the waiver application and an appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion. The motion will be granted and the prior decision of the AAO is withdrawn.

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 ten years of his last departure from the United States. The applicant seeks a waiver of inadmissibility pursuant to 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 and children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, dated May 8, 2013.

On appeal, the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The appeal was subsequently dismissed. *Decision of the AAO*, dated September 26, 2013.

With the instant motion, counsel for the applicant submits the following: a brief, a statement and an affidavit from the applicant's spouse, affidavits from the applicant's mother and her live-in boyfriend, an evaluation pertaining to the applicant's spouse, school records pertaining to the applicant's spouse and child, financial documentation, support letters, medical documentation pertaining to the applicant's spouse and children, travel documentation for the applicant's spouse and children, medical records pertaining to the applicant's spouse's mother, and biographical documents pertaining to the applicant's spouse and children. The entire record was reviewed and considered in rendering this decision.

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 [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.

The record indicates that the applicant entered the United States without inspection on January 25, 2005 and remained until he voluntarily returned to Mexico in August 2012. The applicant began accruing unlawful presence after he turned 18 on January 16, 2007. He accrued over a year of unlawful presence between January 16, 2007, and his departure in August 2012. As the applicant is seeking admission within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) 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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is his only 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.

In the AAO’s decision to dismiss the appeal, the AAO found that the documentation provided did not establish that the emotional and health-related difficulties described were distinguishable from those ordinarily associated with separation as a result of a loved one’s inadmissibility. With respect to the problems faced by the applicant’s children in Mexico, the AAO stated that the applicant’s children, both U.S. citizens, were not required to relocate to Mexico, and neither the applicant nor his spouse had addressed the possibility of scheduling vaccinations in the United States. Nor did the evidence demonstrate that the applicant or his children were suffering separation-related hardship to a degree that elevated the applicant’s spouse’s hardship to an extreme level. As for the financial hardship, the AAO found that the record contained no documentary evidence demonstrating that the applicant had been employed in the United States or showing that he contributed financially to the household. Nor did the record contain any documentary evidence demonstrating that the applicant’s spouse was unable to work or secure employment. *Supra* at 4-5.

On motion counsel has addressed the issues raised by the AAO. To begin, the applicant has provided evidence establishing that her spouse is being treated for anxiety and depression and have been prescribed medications to treat those conditions. In addition, the applicant’s spouse’s mother and her live-in boyfriend have provided letters in support. They both explain that the

applicant's spouse and children are living with them, and, since seven people are reliant on the mother's boyfriend's income of approximately \$1948 per month, only the basic monthly bills are being paid, bills are past due, and the family's debt is growing. Counsel has submitted copies of numerous past due bills and documentation establishing the applicant's gainful employment in the United States prior to his relocation abroad. As noted in the federal income tax returns provided, the applicant earned almost \$25,000 in 2011 as a landscaper, while his wife was a homemaker. Counsel has also submitted evidence establishing that the applicant's children have been temporarily certified for the Women, Infants and Children's (WIC) federally funded nutrition program and are receiving food stamps. Finally, the applicant's spouse explains that she dropped out of school in ninth grade and is consequently unable to obtain a decent paying job, and, even if she were able to obtain employment, the cost of obtaining child care coverage for her young children would be prohibitive. *Affidavit of* [REDACTED] dated October 24, 2013. Based on a thorough review of the record, the AAO concludes that on motion it has been established that were the applicant unable to reside in the United States, the applicant's spouse would suffer extreme hardship

Addressing the hardship she would experience upon relocation to Mexico, the AAO found that it had not been established that the applicant's spouse would suffer extreme hardship in Mexico. *Supra* at 5-6. On motion, the applicant's spouse details that she did move to Mexico to reside with her husband and that due to the hardships suffered there, she was forced to return to the United States. To begin, she explains that at first she and her family were surviving on money they had saved up, but their money did not last long. She contends that the applicant was only able to get work one or two days a week and he only got paid \$10 a day. They were not able to make ends meet and they had to rely on family to pay for diapers and food for the children. Furthermore, the applicant's spouse details that she was not able to get her children enrolled in school and she was not able to get them vaccinated abroad due to lack of vaccines. She contends that she was constantly worried about violence and crime. Finally, the applicant's spouse details that she missed her mother very much. *Supra* at 3-4. The applicant's spouse's mother, in her own declaration, outlines the hardships her daughter experienced while in Mexico. Further, a letter has been provided from the Health Jurisdiction in [REDACTED] Mexico, establishing that the applicant's children were unable to obtain vaccinations in Mexico due to a lack of vaccines. Finally, the record establishes that the applicant's spouse was born and raised in the United States and has no ties to Mexico. Based on a totality of the circumstances, the applicant has established that his spouse would experience extreme hardship were she to reside in Mexico as a result of his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. 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 hardship the applicant's U.S. citizen spouse and children would face if the applicant were to remain in the Mexico, regardless of whether they accompanied the applicant or remained in the United States; the applicant's community ties; past employment in the United States; the applicant's payment of taxes and support letters. The unfavorable factors in this matter are the applicant's entry to the United States without inspection, a conviction for failing to have a valid driver's license in 2009, and periods of unlawful presence and unlawful 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 motion will be granted and the prior decision of the AAO will be withdrawn.