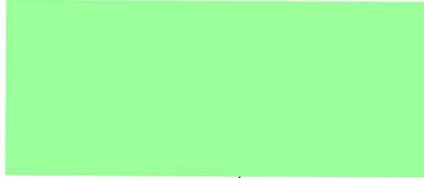




**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: JUN 06 2014

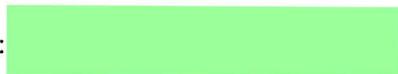
Office: SEATTLE, WA

FILE:



IN RE:

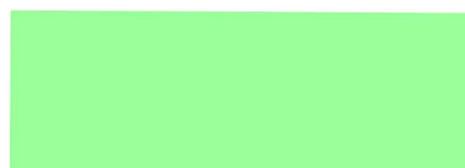
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Seattle, Washington, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship to her husband, particularly considering his mental health, the economic hardship he would suffer, and the fact that he would be unable to care for the couple's two children while continuing to work two jobs.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on January 16, 2000; copies of the birth certificates of the couple's U.S. citizen children; a declaration from the applicant; two declarations from Mr. [REDACTED]; a mental health evaluation; copies of pay stubs, bills, tax returns, and other financial documents; letters from the couple's children; a copy of the U.S. Department of State's report addressing country conditions in Mexico; letters of support; letters from employers; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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.

In this case, the record shows that the applicant first entered the United States in December 1996 using a B2 visitor's visa. The applicant stayed beyond her authorized stay and remained in the United States until December 1999. The record further shows that the applicant again entered the United States in March 2000 using a B2 visitor's visa and departed in December 2000. The applicant last entered the United States using a B2 visitor's visa in March 2001, stayed beyond her authorized stay, and continues to reside in the United States. Therefore, the record shows, and counsel concedes, that the applicant 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.

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.

In this case, the applicant’s husband, Mr. [REDACTED] states he has been married to his wife for thirteen years and that they have had three children together. According to Mr. [REDACTED] their first child died of SIDS (Sudden Infant Death Syndrome) soon after he was born and that it was a very hard time for them. He states they now have two children and that his wife is their primary caretaker. In addition, he states his wife works three days per week while the children are in school and on the weekends. He states he needs her help to financially support their household. He also contends his job changed recently because his previous position was eliminated, and he took a pay cut of \$2,000 per month. He contends he is now also working at a temp agency sixty hours per week in order to support his family and only gets to see his children for about an hour in the mornings when he takes them to school. He states that he needs his wife more now than ever because he is working so much overtime. Moreover, Mr. [REDACTED] states he suffers from seasonal depression and that he fears going into a full-blown depression, particularly in the winter when it’s already hard for him to function. Furthermore, Mr. [REDACTED] states that he has been living in the United States since 1981 and that his entire life is in the United States. He claims his children need to stay in the United States for the educational opportunities and that he would only be able to afford visiting his wife in Mexico once a year.

After a careful review of the evidence, the record establishes that the applicant’s husband, Mr. [REDACTED] will suffer extreme hardship if the applicant’s waiver application were denied. The record shows that Mr. [REDACTED] and his wife have two U.S. citizen children who are currently eight and twelve years old. The record also contains evidence corroborating Mr. [REDACTED]’s contentions that his

employment situation has changed. According to a letter from his employer and tax documents in the record, Mr. [REDACTED] was working full-time as a stone slab installer, earning \$31,576 in wages in 2011, and his wife has worked as a waitress for the past fourteen years, earning \$19,796 in 2011. Recent pay stubs show that as of October 2013, Mr. [REDACTED] had earned only \$12,273 so far that year from the same employer, and a year-to-date total of \$970 from a temp agency. If Mr. [REDACTED] decides to remain in the United States without his wife, his income alone would put him and his two children below the federal poverty level. In addition, the record contains a mental health evaluation from a therapist describing the trauma Mr. [REDACTED] and his wife suffered after losing their first child to SIDS. The therapist also describes Mr. [REDACTED]'s seasonal depression during the winter months and gives him a provisional diagnosis of Major Depression, Recurrent, with Seasonal Pattern. Therefore, the record establishes the hardship Mr. [REDACTED] would experience as a single, working parent to two children while dealing with his own mental health issues. Considering these unique circumstances, the record establishes that if Mr. [REDACTED] continues to stay in the United States without his wife, the effect of separation from the applicant goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Furthermore, returning to Mexico, where Mr. [REDACTED] was born, to avoid the hardship of separation would also be an extreme hardship. The record indicates that Mr. [REDACTED] is currently fifty-two years old and, according to the applicant, the couple's twelve-year old son has only been to Mexico once and their eight-year old daughter has never been to Mexico and hardly speaks any Spanish. Mr. [REDACTED]'s return to Mexico would entail re-adjusting to living in Mexico after having lived almost his entire adult life in the United States, a particularly difficult situation considering he has two U.S. citizen children who have never lived in Mexico. *See Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001) (finding extreme hardship for an adolescent to relocate to China considering she lived in the United States her entire life, is completely integrated into the American lifestyle, and is not fluent in Chinese).

Moreover, the U.S. Department of State's Travel Warning for Mexico urges U.S. citizens to defer non-essential travel to parts of Jalisco, where the applicant and her husband were both born. *U.S. Department of State, Travel Warning, Mexico*, dated January 9, 2014. Considering these factors cumulatively, the record establishes that the hardship Mr. [REDACTED] would experience if he returned to Mexico to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. Therefore, the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Mr. [REDACTED] faces extreme hardship if the applicant is refused admission.

The applicant also merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's unlawful presence in the United States and periods of unauthorized employment. The favorable and mitigating factors in the present case include: significant family ties in the United States including her U.S. citizen husband and two

U.S. citizen children; the extreme hardship to the applicant's entire family if she were refused admission; letters of support in the record describing the applicant's service to her parish and her children's school; letters from the applicant's employer and a coworker describing her as an extraordinary mother and a loyal and hardworking employee; and the applicant's lack of any arrests or criminal convictions.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. 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 her burden and the appeal will be sustained.

ORDER: The appeal is sustained.