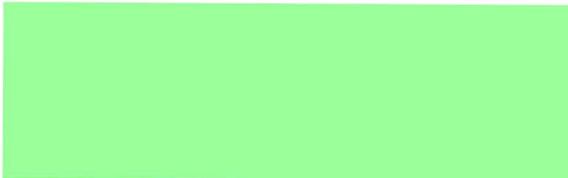




U.S. Citizenship  
and Immigration  
Services

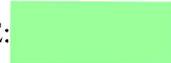
(b)(6)



DATE: MAY 15 2014

OFFICE: NEBRASKA SERVICE CENTER

FILE:



IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to 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:



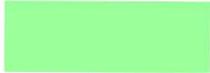
INSTRUCTIONS:

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* 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 Service Center Director, Nebraska Service Center, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion is granted and the prior AAO decision is withdrawn.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 one year or more and seeking readmission within 10 years of departure from the United States. The record reflects that the applicant entered the United States without inspection in June 2005 and remained until her departure in August 2012. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen spouse. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Service Center Director concluded that the applicant did not establish that her qualifying relative would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly. *Decision of the Service Center Director*, dated June 6, 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 October 8, 2013.

On motion counsel for the applicant contends she is submitting evidence of the spouse’s hardship due to separation from the applicant. In support of the motion counsel submits a statement from the applicant’s spouse, a psychological evaluation of the spouse and two of his children, letters of support from friends and employers of the applicant’s spouse, medical information for the applicant’s children, and financial documentation. The record includes a previous psychological evaluation of the applicant’s spouse, biographical information for the applicant and her husband, a statement from the applicant’s spouse, and country conditions information on Mexico. The entire record was reviewed and considered in rendering a decision.

Section 212(a)(9)(B) 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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 or the child 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 deportation, 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, 885 (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 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.

On appeal, the AAO noted that the record did not document any financial or physical hardship, and included no record of the expenses that the spouse had incurred as a result of travel to visit the applicant and their children in Mexico. The AAO further noted that the record did not contain documentation of the spouse’s income and expenses or how his daily functioning had been effected by the hardship that he stated that he was experiencing. Regarding if the applicant’s spouse were to relocate to Mexico to reside with the applicant, the AAO noted that the spouse states that he was only able to support his family through his employment in the United States and cited the dangerous country conditions in Mexico, but failed to document his employment, why he would be unable to find employment in Mexico, or whether the applicant is able to obtain employment to support herself and her family. The AAO determined that the record did not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

On motion counsel asserts that the applicant maintains a house and job in the United States and a house in Mexico, where he must travel to see the applicant and their children. Counsel contends that the couple’s son has bronchitis and must be brought to the United States for treatment. Counsel asserts that their children are not receiving a quality education in Mexico, but it is

difficult for the spouse to find affordable daycare in the United States. Counsel further asserts that the applicant's spouse could lose his job because of absences to visit his family.

The applicant's spouse states that he tried to have the older children with him in the United States for school, but because of his work schedule and for financial reasons was unable to care for them well, so they are staying with the applicant in Mexico. The spouse states that he finds it difficult to concentrate on work while missing the best years of children's lives and that he only works two or three weeks a month so he can spend time with his family in Mexico, which affects him financially. He states that he must choose between seeing his family or offering them food, that he supports two homes, that when the children are ill he must bring them to a doctor in the United States, and that he worries every month about sending money because the family depends on his financial support.

An evaluation by a licensed psychologist states that the applicant's spouse appears emotionally and physically weary and overwhelmed and that he shows significant levels of emotional distress. The evaluation states that the spouse reports spending all his money on travel and daily expenses in Mexico, but that he is unable to keep his children with him here due to his work schedule. It states that the spouse reports feeling desperate about his family situation, fearing for their relationship due to prolonged separation, having difficulty concentrating at work, and losing work clients because he is unavailable on a consistent basis. The evaluation also states that two of the children appear to have symptoms of emotional distress related to separation from their father and the mother's emotional adjustment.

A letter from the spouse's employer states that he misses work every month to visit his family, causing delays in completing his job responsibilities and affecting the company, so he may be let go from his employment. Medical documentation submitted to the record shows that two of the applicant's children visited doctors in the United States, and financial documents show the spouse owns his home in the United States while sending money to Mexico and making purchases there.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse is experiencing extreme hardship resulting from his separation from the applicant. The record shows the spouse suffers emotional hardship while separated from the applicant as well as financial hardship supporting two homes, both of which affect his ability to concentrate on his employment.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Mexico to reside with the applicant. The spouse states that the applicant lives in a dangerous area, Piedras Negras, and that he fears his family could become hostages or be robbed or harmed. The U.S. Department of State recommends deferral of non-essential travel to the state of Coahuila, as it experiences high rates of violent crime and narcotics-related murders, and it states that violent crime, including murder, kidnapping, and armed carjacking, continues to be a major concern in the cities including, Piedras Negras. *See Travel Warning-U.S. Department of State*, dated January 9, 2014. The record further shows that the applicant's spouse, who has resided in the United States for over fifteen years and became a U.S.

Citizen in 2009, would be giving up his home and employment. Thus the record reflects that the cumulative effect of the qualifying spouse's length of residence in the United States, safety concerns, and loss of employment and home were he to relocate, rises to the level of extreme.

Considered in the aggregate, the record establishes 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.

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.

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 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 in this matter are the hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, the applicant's support from the qualifying spouse, and her apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's accrual of unlawful presence in the United States.

Although the applicant's violations of the immigration laws are serious, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

In these proceedings, 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 his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.