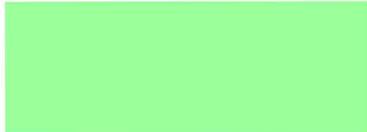




U.S. Citizenship
and Immigration
Services

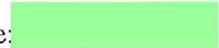
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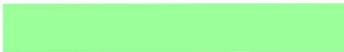
OFFICE: ALBUQUERQUE, NM

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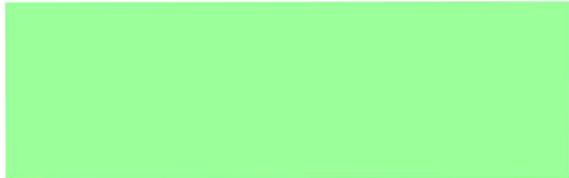
Applicant:



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, Albuquerque, New Mexico, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be 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 ten years of her last departure from the United States. The record indicates that the applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). She 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.

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, accordingly. *See Decision of the Field Office Director*, dated September 9, 2013.

On appeal counsel contends that evidence submitted on appeal establishes that if a waiver is not granted, the applicant's U.S. citizen spouse will suffer extreme hardship. *See Notice of Motion or Appeal (Form I-290B)* and *Counsel's Appeal Brief*, received October 11, 2013.

The record contains, but is not limited to: Form I-290B; counsel's appeal brief; various immigration applications and petitions; hardship letters from the applicant's spouse; letters from the applicant and her daughter; letters from the applicant's spouse's three children and numerous letters of support from additional family members and others; employment, tax and financial records; birth, marriage and divorce certificates; child support records; church and education-related documents; and personal greeting cards and family photos. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act provides:

(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.

The record shows that the applicant entered the United States from Mexico in 2001 using a border crossing card, authorizing her to remain no longer than 30 days. The applicant stated during her

June 10, 2013 adjustment of status interview that she remained in the United States until January 2004 when she returned to Mexico. The applicant re-entered the United States with a border crossing card in July 2005 and remained for 15 days. She most recently entered the United States with a border crossing card in August 2006 and has not departed since. The applicant has accrued unlawful presence in excess of one year. As the applicant is seeking admission within 10 years of her departure, she 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.¹

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 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

¹ If the applicant intended to immigrate to the United States in 2001 and/or 2006, this violates the terms of her border crossing card which restricts her stay to a 30-day visit within 25 miles of the border, possibly making her inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for seeking admission into the United States or other benefit provided under the Act by willful misrepresentation. Assuming for purposes of this appeal that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, because we find that she has demonstrated eligibility for a waiver of her section 212(a)(9)(B)(i)(II) inadmissibility under section 212(a)(9)(B)(v) of the Act, and meeting the waiver requirements under section 212(a)(9)(B)(v) also satisfies the requirements for a waiver of grounds of inadmissibility under section 212(i), we would also find that the applicant merits a waiver of section 212(a)(6)(C)(i) inadmissibility.

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.

The applicant's spouse is a 44-year-old native of Mexico and citizen of the United States who asserts separation-related hardship of an emotional/psychological, economic/employment and familial nature. He indicates that the failure of his first marriage after more than 20 years left him horribly depressed, with no desire to eat, sleep or live. The applicant's spouse explains that after learning that his former wife had cheated, he had to seek emergency room medical treatment for what he describes as a swollen head and inability to balance, and was told by a doctor to find tranquility and rest. He fears that if separated from the applicant, he would suffer similar sickness and even greater depression. The applicant's spouse states that he felt worthless following his divorce and the only thing that gave him strength was visits from his three children, to whom he is

very close, but he could still not manage to leave the house and move on with his life. Letters from all of his children and multiple other relatives concur that the applicant's spouse was in a deep depression before meeting the applicant but that his relationship with her has dramatically improved his health and well-being and has given him tremendous joy and optimism. The applicant's spouse writes, and letters from many others confirm, that he loves and is raising the applicant's U.S. citizen daughter, [REDACTED] as his own but he fears he will be unable to care for her properly in the applicant's absence as she is about to enter adolescence and he works long hours up to six days per week for the U.S. Postal Service (USPS). He additionally has great concern that she will suffer terribly without her mother and he believes her suffering will cause him to suffer even greater emotional anguish and hardship.

The applicant's spouse explains that he has only worked for USPS for four years and thus lacks seniority to be on call less than six days per week or to take time off to visit the applicant in Chihuahua, Mexico, which is a nine-hour drive from his home. He additionally has commitments to three families who reside in a triplex rental property he owns and manages and to his three children, whom he sees and spends time with regularly. He further states that he still pays child support for his youngest child. The applicant's spouse indicates that he fears driving to Chihuahua for his own safety and that of his 11-year-old stepdaughter, whom he would have to bring to visit her mother. He expresses even graver concern for the applicant's safety, as violence is rampant in Chihuahua, and he fears that constant worry for her well-being will negatively impact his own. Counsel refers to U.S. State Department travel warnings for Mexico, and the AAO has reviewed the most recent warning, issued January 9, 2014. Therein, U.S. citizens are warned that crime and violence are serious problems, can occur anywhere, and U.S. citizens have fallen victim to criminal activity including homicide, gun battles, kidnapping, carjacking and highway robbery. The report specifically warns U.S. citizens to defer non-essential travel to Chihuahua City, Ciudad Juarez, Copper Canyon and anywhere else in the state of Chihuahua, and to travel during daylight hours only between cities.

The AAO has considered cumulatively all assertions of hardship to the applicant's spouse, including the emotional/psychological hardship in light of his prior history of depression and the positive impact the applicant has had on his life; the exacerbation of his condition by worry for the applicant's safety in Chihuahua, Mexico, where rampant violence is well-documented; the economic and employment hardship of placing his job at risk by requesting time off to visit the applicant; the physical and safety-related hardship of driving 18 hours round-trip to visit the applicant in Chihuahua where U.S. citizens have been warned to defer non-essential travel; and the inherent difficulties of raising the applicant's 11-year-old daughter without her mother and safety issues related to bringing her with him to visit the applicant. Considered in the aggregate, the evidence on the record is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

Addressing relocation, the applicant's spouse asserts hardship of an emotional, familial, economic, and employment nature. He indicates that he has lived in the United States since he was a young teenager and adjusting to life in Mexico would be very difficult, particularly as his entire world has been built in the United States. The applicant's spouse writes that he has very close family ties to the United States, particularly to his three U.S. citizen children - one who is still a minor

and another who is about to start college; his U.S. citizen stepdaughter who resides with him and the applicant and whom he is raising as his own; his two brothers, their children, and numerous other relatives – many of whom wrote letters of support and concern for him in the event of either separation or relocation to Mexico. He likewise describes close ties to friends, his church community, and the three families residing in a triplex he owns and manages and who rely on him to keep up their home. The applicant's spouse explains that he has secured steady employment with the USPS which gives him great job security, allows him to earn benefits, and from which he would like to retire one day after a full career. He expresses great fear of losing his job and the income that has enabled him to support his family, purchase his own home, make steady child support payments, and help put his children through college. The applicant's spouse states that he will not earn enough in Mexico to pay his continuing expenses, including mortgages on both properties, ongoing child support payments, and the expense of putting his younger children through college. Financial documents submitted for the record corroborate the applicant's spouse's employment, income, property ownership and expenses. The applicant's spouse believes he would lose his home, rental property, employment and employer-provided health insurance and other benefits and the ability to provide for himself and his family and maintain a close relationship with them, were he to relocate to Mexico. He expressed great fear for his own safety and that of the applicant and her young daughter in Chihuahua Mexico, where rampant violence has been well-documented.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including his adjustment to a country in which he has not resided for nearly forty years and separation from his family in the United States, particularly his three U.S. citizen children. The record establishes his personal home ownership and his ownership and management of a triplex apartment where three families reside, his steady employment in the United States and employer-provided health insurance and other benefits, his strong community ties, his lack of significant ties to Mexico, and his stated health- and safety-related concerns about Mexico. Considered in the aggregate, the evidence on the record is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Mexico to be with the applicant.

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 AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez 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 favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the significant emotional and familial support the applicant provides to her U.S. citizen spouse; the applicant's significant family ties to the United States, particularly to her U.S. citizen daughter and her spouse's children; attestations to her good moral character and essential presence in the community and in her spouse's life; and her apparent lack of any criminal record. The unfavorable factors are the applicant's immigration violations, which include possible misrepresentations when entering the United States using a border crossing card, her violations of its terms in that she remained in the United States beyond the period allowed and resided further from the border than permitted, and her periods of unlawful presence and unauthorized employment in the United States. Although the applicant's violations of immigration law are significant, the positive factors in this case outweigh the negative factors.

(b)(6)

NON-PRECEDENT DECISION

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Therefore, pursuant to section 212(a)(9)(B)(v) of the Act, the AAO finds that a favorable exercise of 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.