



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: FEB 10 2015 Office: ALBUQUERQUE

FILE: [REDACTED]

IN RE: [REDACTED]

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:
[REDACTED]

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 waiver application was denied by the Acting Field Office Director, Albuquerque, New Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native and citizen of Mexico who was found 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 admission within ten years of his last departure from the United States. The applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The Acting Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. She denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Acting Field Office Director*, dated March 12, 2014.

On appeal, the applicant's attorney asserts that the Acting Field Office Director was dismissive of evidence of the applicant's spouse's medical and psychological hardship, discredited evidence about her prior abusive marriage, and failed to consider the hardship factors in the aggregate. He states that the applicant's qualifying spouse would suffer extreme emotional, medical and financial hardships upon separation from the applicant or upon relocation to Mexico.

The record includes, but is not limited to, letters and briefs written on behalf of the applicant; financial documentation, including employment and property records; affidavits and letters from the qualifying spouse, her two children and the applicant; medical documentation; two psychological assessments of the applicant's spouse; photographs; documentation regarding the applicant's medical malpractice claim; a 2013 Department of State Travel Warning for Mexico; and documents establishing relationships. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record reflects that the applicant entered the United States without inspection at or near [REDACTED], Texas in February 1999 and remained in the United States until August 30, 2007. He therefore accrued over one year of unlawful presence between February of 1999 and his departure in August of 2007. On September 12, 2007, the applicant returned to the United States with a grant of humanitarian parole based on his spouse's medical condition. He has not departed since 2007. He is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of 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 admission within ten years of his departure from the United States. The applicant does not contest his inadmissibility.

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 spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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*, 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.

Regarding the hardship that the applicant’s qualifying spouse were to experience if she remains in the United States while the applicant resides in Mexico, the applicant’s spouse states that she will suffer from emotional, physical and medical hardships. Specifically, the applicant’s spouse indicates that her ex-spouse was mentally and physically abusive to her; the abuse began when they first married and lasted for seventeen years. She also indicates that her children witnessed the abuse. The applicant also states that his wife’s ex-husband was unfaithful. In the most recent of two psychological evaluations, the counselor reports that the applicant’s spouse is a victim of domestic violence and emotional harassment by her ex-spouse. The counselor notes that the applicant’s spouse suffered from depression and is especially vulnerable to challenging life events because of the chronic abuse and degradation she endured for many years. In both assessments the counselor indicates that the qualifying spouse suffers from depression, anxiety, fatigue,

headaches, and panic attacks. As a result, the applicant's spouse was diagnosed with major depressive disorder with melancholic features and panic attack. The counselor recommends that the qualifying spouse receive support from the applicant and concludes that her experience would be devastating if she had to deal with her health issues alone.

The qualifying spouse further states that she has medical issues and she would suffer physically without the applicant. The applicant provides ample documentation reflecting a history of his spouse's health issues, including, but not limited to, high cholesterol, high blood pressure, herpes, anemia, colitis and diabetes. Medical evidence confirms that the applicant's spouse was hospitalized several times after complications caused by errors made during her appendectomy in 2007, and she also has had knee surgery and tubal ligation. The applicant submits evidence that in November 2013, after her hysterectomy, his spouse was diagnosed with invasive carcinoma of the cervix stage 1-A, for which she is being monitored quarterly. The qualifying spouse states that the applicant provides her with support with her health issues, including buying her medications, reminding her to take them and helping with household chores. The evidence of her long history of medical treatment and her most recent diagnosis of cervical cancer establishes that the qualifying spouse suffers from critical health issues and that the applicant's support is necessary. Considering the evidence of her serious and longstanding emotional, psychological and medical issues in the aggregate, the record establishes the applicant's spouse would suffer extreme hardship if she were to remain in the United States without the applicant.

Concerning the hardship that the applicant's wife would experience if she were to relocate to be with the applicant, the applicant states that she would lose her medical insurance and that she would be unable to pay for medical care in Mexico without such insurance. As outlined above, the applicant's spouse has several serious medical issues for which she requires monitoring, most notably her recent diagnosis of cervical cancer. We acknowledge that leaving her medical providers in the United States and her access to medical insurance through her long-term employment would cause her significant hardship.

The qualifying spouse also states that the applicant's family lives in a small village in Mexico, and their home lacks air conditioning, heating and hot water. The record also reflects that, while the applicant's spouse has visited Mexico at least once briefly, she claims she speaks little to no Spanish and fears that relocating there would cause her culture shock.

The applicant's spouse also indicates that her family, including her two adult children and two sisters, live in the United States and that she sees them once a week. She also states that she attends church regularly. With respect to her employment, she has worked for the same company since September 15, 2008, and she would lose her long-term employment upon relocation to Mexico. In addition, the record indicates that she owns property in the United States. These financial and emotional ties to the United States represent additional hardships to the applicant's spouse.

The applicant's spouse also raises safety concerns about living in Mexico. The record includes a 2013 U.S. Department of State Travel Warning for Mexico, dated July 12, 2013, advising U.S. citizens to exercise caution when traveling to areas of [REDACTED] that border the state of

The most recent advisory, dated December 24, 2014, indicates no advisory in effect for other areas of the state. It appears that the applicant's family lives near the border state of [REDACTED] and that her safety concerns may be supported by current conditions in the area. Considering the evidence of her hardship in the aggregate, the record establishes the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico 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.

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 extreme hardship the applicant's U.S. citizen spouse would face if the applicant is not granted this waiver, whether she accompanied the applicant or remained in the United States; his ties to the United States, including to his U.S. citizen stepchildren who are supportive of his application; his payment of taxes; his lack of a criminal

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record; and letters of support addressing his good character. The unfavorable factor in this matter is the applicant's unlawful presence in the United States.

Although the applicant's immigration violation is serious, the record establishes that the positive factors in this case outweigh the negative factors and 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.