



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-M-T-M-

DATE: SEPT. 30, 2015

APPEAL OF SANTA ANA FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The Field Office Director, Santa Ana Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant was found to be inadmissible to the United States pursuant to 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 readmission within 10 years of her last departure from the United States.

The Director concluded that the Applicant had not established that her qualifying spouse would suffer extreme hardship and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal the Applicant asserts that denial of her application would result in extreme hardship to her qualifying spouse because of his emotional and physical health issues and his financial hardship. The Applicant further asserts that her qualifying spouse has extensive family ties in the United States and none in Mexico. The Applicant also states that her favorable factors greatly outweigh the unfavorable factors.

The record includes, but is not limited to, a brief; statements from the qualifying spouse, his parents, other family members, and friends; documents establishing identity and relationships; medical records; reports on conditions in Mexico; photographs; and financial documents. The entire record¹ was reviewed and considered in rendering a decision on the appeal.

¹ The record also includes at least one document in Spanish that was not considered because it was not translated. *See* 8 C.F.R. § 103.2(b)(3) (requiring foreign language documents to be accompanied by a full English translation that a translator has certified as complete and accurate, and by the translator's certification of competency to translate from the foreign language into English).

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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(v) Waiver.-The Attorney General [now Secretary of the Department 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 [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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

In the present case, the record reflects that the Applicant entered the United States with a visitor's visa in 1998 and was permitted to voluntarily return to Mexico in July 2008. The Applicant is therefore inadmissible under section 212(a)(9)(B)(i) of the Act for having been unlawfully present in the United States. The Applicant does not contest the finding of inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The Applicant's qualifying relative is her U.S. citizen husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 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.

The record contains references to hardship the Applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an individual's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the Applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the Applicant's child will not be separately considered, except as it may affect the Applicant's spouse.

The Applicant asserts her spouse would experience extreme hardship if he were to relocate with her to Mexico. The record reflects that her spouse was born in the United States and has resided here his entire life. The Applicant asserts that relocation would cause extreme hardship to her spouse based on his health, his separation from family, financial difficulties, and safety concerns. She provides medical records of her spouse and his parents, and financial records concerning her spouse. She also submits reports on conditions in Mexico

The Applicant states that her spouse suffers from post-traumatic stress disorder (PTSD), generalized anxiety disorder, and major depressive disorder. To corroborate these claims, the Applicant submits a detailed statement from her husband and a psychological evaluation. According to an associate clinical social worker (ACSW), the Applicant's spouse suffers from several serious health issues, including PTSD; generalized anxiety disorder; and major depressive disorder, recurrent and severe with psychotic features. Both the ACSW and the Applicant's spouse state that separation from his family would exacerbate these conditions, because he relies upon his family for emotional support. The Applicant's spouse explained that he suffers PTSD because he was involved in a fatal car accident in which his grandfather was killed, and he was abused as a child. His doctor has prescribed anti-depressant, anti-anxiety, and sleep medications for the Applicant's spouse. The Applicant's spouse reported symptoms of depression, including sadness and depressed mood, crying spells, irritability, feelings of hopelessness and guilt, loss of energy and motivation, auditory hallucinations, and suicidal ideation. He reported symptoms that are consistent with PTSD, such as recurring distressing recollections of prior traumatic events, intense psychological distress at exposure to triggers, efforts to avoid thoughts associated with the trauma, hyper-vigilance, and psychological numbing. He also reported symptoms that are consistent with generalized anxiety disorder, such as excessive anxiety and worry, nervousness, restlessness, difficulty with concentration, and headaches. The Applicant's spouse states that he has begun drinking heavily as a way to escape his feelings related to his fear of separation from the Applicant. He states that his emotional distress has caused physical complications, such as severe abdominal pains and vitamin D deficiency.

The Applicant's spouse states that if he moves to Mexico with the Applicant, he would be separated from his extended family, and though his family is from Mexico, he has only distant relatives there now. His parents rely on him to drive them to their medical appointments. His mother suffers from

(b)(6)

Matter of C-M-T-M-

hypertension, hypothyroidism, heartburn, h. pylori, and obesity. His father suffers from hypertension and high cholesterol.

With respect to medical and financial hardship he would experience upon relocation, the record reflects that the Applicant's spouse has health insurance through his employer and the Applicant asserts that if her spouse moves to Mexico, he would lose that healthcare coverage.

She also submits extensive financial documentation, indicating that she and her spouse have substantial financial responsibilities. They own a home with a fair market value of \$555,000, secured by a mortgage of approximately \$695,000. The Applicant's husband owes \$33,000 in student loans. They have significant credit-card debt and high utility bills. They submit documentation reflecting their debt consolidation efforts. The Applicant's spouse is concerned about defaulting on his debt from Mexico, because he will be unable to find suitable employment there, ruining his credit as a result. The Applicant submits a report describing Mexico's high unemployment rate.

In addition, the Applicant's spouse expresses concerns about the family's personal safety if they move to Mexico, given the high rate of violent crime. The Applicant is from [REDACTED]. She submits numerous reports about conditions in Mexico in general, and in Sonora specifically. According to the reports, one of Mexico's most powerful drug cartels is based in [REDACTED], which has a very high drug-related death rate. Alternatively, the Applicant and her spouse state that if they were to live in the area where her in-laws come from, [REDACTED], they face similar threats of kidnapping and other types of drug cartel-related violence.

The documentation in the record, when considered in its totality, reflects that the Applicant's spouse will experience extreme hardship were he to relocate with the Applicant to Mexico. He would suffer emotional hardship due to separation from his family members and the only life he has known. The record includes evidence corroborating claims that the Applicant's spouse would experience financial hardship in Mexico due to a lack of employment opportunities. The Applicant has shown that her spouse requires ongoing medical treatment for several serious mental-health problems. In addition, the country-conditions evidence in the record indicates that the Applicant and her spouse are likely to reside in unsafe areas with high levels of drug-related violence. The record, therefore, contains sufficient evidence of emotional, financial, medical and other types of hardship that, considered in the aggregate, establishes that the Applicant's qualifying spouse would suffer extreme hardship upon moving to Mexico.

We will next address hardship the Applicant's spouse would experience as the result of the Applicant's inadmissibility, should he remain in the United States. The record reflects that the Applicant and her spouse wed in 2008, approximately seven years ago, and they have a 28-month old daughter. The Applicant's spouse says that the possibility of his child being deprived of her mother's love and care is very distressing to him. He is anxious that he will be unable to care for their daughter alone. The Applicant submits articles addressing the importance of a mother's relationship to an infant.

(b)(6)

Matter of C-M-T-M-

This matter arises in the [REDACTED] district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The Applicant’s spouse states that he is emotionally and physically distraught due to the possibility of being separated from his wife, the Applicant. He states that his anxiety is manifest in an accelerated heart rate, insomnia, difficulty breathing, sweating, hyperventilating, and digestive problems. The ACSW who evaluated the Applicant’s spouse states that the Applicant’s spouse meets the diagnostic criteria for major depressive disorder, recurrent and severe with psychotic features, PTSD, and generalized anxiety disorder. The record includes sufficient evidence to support claims that the Applicant is taking prescription drugs to treat his depression and anxiety. The ACSW states that the Applicant’s spouse’s symptoms are likely to worsen if he is separated from the Applicant. The ACSW further states that anxiety aggravates the Applicant’s spouse’s PTSD. The ACSW also addressed the potential impact of separation from the Applicant on the Applicant’s child, concluding that although the effects vary, the negative impact cannot be minimized. To the extent that the Applicant’s daughter’s well-being affects the Applicant’s spouse’s hardship, we will take it into account. Moreover, the record includes descriptions of high levels of drug cartel-related violence in Mexico that would increase the Applicant’s spouse’s anxiety levels, owing to his concerns about the Applicant’s safety.

With respect to the financial hardship he would experience if he remains in the United States without the Applicant, her spouse asserts he would have great difficulty caring for their child alone. He says that in the Applicant’s absence, he would have to pay for child care. As noted above, the Applicant and her family have incurred substantial debts that her spouse would need to manage without her assistance.

The documentation in the record, when considered in its totality, reflects that the Applicant’s spouse will experience extreme hardship were he and the Applicant to separate. He would suffer emotional hardship, including hardship related to the negative effect separation would have on their child. In addition, the Applicant’s spouse would suffer greater anxiety knowing that the Applicant would likely live in a region of Mexico that could expose her to drug cartel-related violence. The Applicant’s spouse also would experience financial hardship due to his added expense of child care, given his current debt. The record, therefore, contains sufficient evidence of emotional and financial hardship that, considered in the aggregate, establishes that the Applicant’s qualifying spouse would suffer extreme hardship upon separation.

Matter of C-M-T-M-

Considered in the aggregate, the Applicant has established that her 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-Morales*, 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.

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-Morales*, 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-Morales at 300.

In *Matter of Mendez-Morales*, 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

Matter of C-M-T-M-

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 section 212(h)(1)(B) 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 include the Applicant's extensive family ties in the United States, her long term residence here, extreme hardship to her U.S. citizen husband, hardship to her U.S. citizen child, her lack of criminal convictions, her home ownership, and her good moral character, as described in letters submitted with her Form I-601. The unfavorable factors include the Applicant's unlawful presence and several traffic violations.

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.

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 and the appeal will be sustained.

ORDER: The appeal is sustained.

Cite as *Matter of C-M-T-M-*, ID# 12204 (AAO Sept. 30, 2015)