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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-H-M-

DATE: FEB. 4, 2016

APPEAL OF MEXICO CITY DISTRICT 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 Director, Mexico City District 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 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 one year or more. The Applicant is the Beneficiary of a Form I-130, Petition for Alien Relative, and seeks a waiver of inadmissibility in order to reside with his wife in the United States. Concluding the Applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, the Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of District Director,* October 16, 2009.

On appeal, filed on November 25, 2009 in [redacted] Mexico, and received by this office on July 24, 2015,[1] the Applicant contends that USCIS erred in concluding that his wife would not suffer extreme hardship as a result of the Applicant's inadmissibility. In support, the Applicant provides additional evidence including a psychological evaluation; medical, financial, and country condition information; an updated hardship statement; identification documents; and supportive statements. The record also contains documentation submitted with the waiver application. The entire record was reviewed and considered in rendering this decision.

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-
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> . . . .

[1] While awaiting a decision on the appeal, which has been pending since November 2009, the Applicant filed a new Form I-601 on September 29, 2014. On de novo review, we consider the pending appeal and all evidence of record.

> (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.
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> . . . .
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> (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…

The Applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act for accruing more than one year of unlawful presence from March 2006, when he entered the United States without admission or parole, until departing in March 2008 to attend his immigrant visa interview in Mexico. The Applicant does not contest that he requires a waiver to reenter the country.

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 or his child can be considered only insofar as it results in hardship to a qualifying relative. The Applicant's U.S. citizen spouse in 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury," *Matter of Ngai,* 19 I&N Dec. 245, 246-47 (BIA 1984), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *see also Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in

determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

Regarding whether the Applicant has established that a qualifying relative would suffer extreme hardship by relocating, the evidence shows that the cumulative effect of difficulties impacting his wife represents hardship that rises to the level of "extreme." The record shows that his 30-year-old wife was born and has lived in the United States most of her life, except when she relocated to Mexico to reside with the Applicant, and she has strong ties in her community. The record shows that she accompanied the Applicant to his February 2008 visa interview in [redacted] When he was denied a visa, she remained in Mexico and they lived with his family in his native [redacted] state for 18 months, until health and financial problems caused her to return to the United States. When his waiver application was denied in October 2009, she moved back to Mexico, where they both took up residence with her parents on their small ranch in [redacted] state. She states that poverty, lack of work, and ongoing health problems caused her to return periodically to the United States to earn money and improve her health. She had the couple's baby during a 2012 U.S. visit, then moved herself and her son back to Mexico.

The Applicant's spouse claims that fear for her family's safety in Mexico has caused her to suffer insomnia, loss of appetite, crying episodes, forgetfulness, and flashback to traumatic events. Official U.S. government reporting regarding violent crime in Mexico substantiates her concerns about safety both in [redacted] where the Applicant's immigrant visa application is being processed, and in her native [redacted] state, where she, her husband, and their three-year-old son have been living on her parents' small ranch. *See Travel Warning--Mexico*, U.S. Department of State (DOS), May 5, 2015. We note that the DOS warning advises U.S. citizens about the risks of travel throughout [redacted] as well as in [redacted] (for having one of the highest homicide rates in Mexico), and reports travel restrictions for U.S. government personnel to both areas. Country condition information states that kidnapping and extortion have risen in parts of the country, and the Applicant asserts his spouse and U.S. citizen child are at risk for having been eyewitnesses to cartel actions and as bystanders who themselves may fall victim to such violence. *See Country Information—Mexico,* DOS, February 6, 2015.

The record includes a psychologist's report diagnosing the Applicant's spouse as having persistent depressive disorder with major depressive episodes, which supports claims about the impact that moving to Mexico has had on her. Further, the psychologist notes that she displays some symptoms of post-traumatic stress disorder (PTSD), due to being surrounded in Mexico by violence she cannot discuss for fear of retribution. Evidence that [redacted] is a center of cartel violence accords with the qualifying relative's statement that witnessing assaults and physical beatings places her in danger of being targeted as a witness to such crimes. The psychologist concludes that living in Mexico will continue to cause the Applicant's spouse extreme stress due to fear of violence to herself, as well as to her family, thus causing her to become more depressed. Further, relocating to Mexico would remove access to quality medical care for herself and for her three-year-old son, and there is evidence the Applicant's spouse has become ill with frequent gastrointestinal infections (causing her pain, vomiting, and diarrhea) during periods of residence in Mexico. She states she sought

treatment, was prescribed medication she could not afford, and had to return to the United States to regain her health. As the Applicant's spouse has experienced these medical problems while attempting to live in Mexico, the adverse consequences are actual and not speculative. We conclude therefore that, in the aggregate, the hardships the Applicant's spouse would experience by relocating to Mexico to reside with the Applicant go beyond those hardships ordinarily associated with inadmissibility or exclusion.

Regarding the Applicant's claim of hardship to his wife due to separation, there is substantial evidence that the emotional difficulties to her resulting from the Applicant's departure exceed the typical consequences of separation from a family member. The psychological evaluation establishes that the qualifying relative experiences the aforementioned symptoms of psychological distress due to her spouse's absence to such a degree that she continues to return to Mexico despite her fear and the poor living conditions she states she experienced in Mexico. The record reflects that the Applicant's spouse's first-hand knowledge of the violence to which her husband's employment in Mexico – as a mason working at homes of wealthy individuals possibly associated with drug cartels – exposes him has caused her to suffer many of the symptoms common to PTSD.

Further, the record supports the Applicant's claims that his absence has caused financial hardship to his spouse. Documentation establishes that the Applicant's wife earns less than $1,000 monthly in the United States based on a 50-hour work week, so that her approximately $10,800 annual income falls below federal poverty guidelines by $5,000 or more,[2] and her fixed monthly expenses for rent and childcare exceed $500. The record reflects that, for much of the time he has been in Mexico, the Applicant has been unemployed and living either with his parents or his wife's parents. When able to find work as a mason, the Applicant has had to perform services for wealthy individuals he fears may have ties to cartels.

For all these reasons, the cumulative effect of the medical, emotional, and financial hardships the Applicant's spouse will continue to experience due to the Applicant's inadmissibility rises to the level of extreme. We conclude based on the evidence provided that, were his spouse to remain in the United States without the Applicant due to his inadmissibility, she would suffer hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the Applicant has established that his wife would suffer extreme hardship were the Applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of hardship required for a waiver. However, the grant or denial of the waiver does not turn only on the issue of extreme hardship. It also hinges on the discretion of the Secretary pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957):

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[2] The 2015 Federal Poverty threshold for a family of two is $15,930. *See* Annual Update of the HHS Poverty Guidelines, 80 Fed. Reg. 3,236, 3,237 (January 22, 2015).

> In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996).

We must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the Applicant's U.S. citizen wife will face if the Applicant were to reside in Mexico, regardless of whether she accompanied him or remained in the United States; the Applicant's lack of any criminal convictions; support letters evidencing good character; gainful employment in the United States; and the passage of nearly 10 years since the Applicant's unlawful entry into the United States. The unfavorable factors in this matter are the Applicant's unlawful entry, presence, and employment here.

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 that burden.

ORDER: The appeal is sustained.

Cite as *Matter of A-H-M-*, ID# 15173 (AAO Feb. 4, 2016)