U.S. Citizenship and Immigration Services

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

MATTER OF A-B-M-V-

DATE: FEB. 23, 2016

APPEAL OF FRESNO 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 Director, Fresno Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

In a decision dated June 4, 2015, the Director found the Applicant 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 one year or more. The Applicant seeks a waiver of inadmissibility to remain in the United States as the derivative Beneficiary of an approved Form I-130, Petition for Alien Relative, filed on behalf of her spouse. The Director concluded the Applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, the Applicant asserts she provided sufficient evidence to show that extreme hardship to her spouse would result from her inability to remain in the United States. The record contains a brief citing evidence previously submitted. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent part:

> (i) In General
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> Any alien (other than an alien lawfully admitted for permanent residence) who—
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> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

> (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
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> 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.

The record reflects that the Applicant entered the United States in August 1995 with her five children using a B1/B2 Border Crossing Card and was admitted for a period of six months. She remained in the United States until returning to Mexico in January 2005 to attend the funeral of her mother-in-law and reentered the United States a week later with her Border Crossing Card. When she later filed the Form I-485, Application to Register Permanent Residence or Adjust Status, as the derivative Beneficiary of an immigrant petition filed by her spouse's sister, she was thus found inadmissible under section 212(a)(9)(B)(i) of the Act and denied adjustment of status, while her spouse was granted permanent resident status on February 26, 2015. The Applicant does not dispute that her 2005 departure triggered inadmissibility for unlawful presence.

Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion for

> 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.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relative is the Applicant's lawful permanent resident spouse. Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

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 to Mexico, the record shows that her 60-year-old spouse entered the United States in 1995, has lived here more than 20 years, and is well-established in his community, where he works full-time. Further, all six of the couple's children, ranging in age from to 34, live here,[1] with the youngest still living at home and attending school. There is evidence that the Applicant's spouse takes prescription medication for medical conditions including hypertension and vertigo. He claims that long residence in the United States makes him and his family a target for kidnappers in Mexico, which causes him to fear for his family's safety should he and his daughter accompany the Applicant back to Mexico. A. U.S. Department of State travel warning substantiates his concerns about personal safety in both his wife's native state and his own home area in Mexico state. Additional country condition information issued by the Department of State reports that extortion has risen in many parts of the country including areas adjoining the couple's home states, and travelers are warned about heightened risk of carjackings and kidnappings.

Medical records confirm that the Applicant's spouse may have suffered a mild heart attack and now takes blood pressure medication along with drugs to treat recurring episodes of dizziness. He claims that these conditions, together with being a 60-year-old with a sixth grade education, will make it difficult to find work comparable to his current $40,000-per-year job and impossible to replace the employer-provided medical insurance that permits him to receive treatment for his medical condition. He claims that reduced earning capacity will limit his ability to receive continuity of medical care. He worries not only about the loss of health benefits and personal security for himself and his wife, but also about the inability of his U.S.-born daughter to continue receiving a quality education, and he states he would be unable to afford school costs and she would not qualify for free secondary education. In addition, he states that returning to Mexico would eventually cause him to forfeit his lawful permanent resident status and lose the opportunity resume his residence in the United States.

For all these reasons, the cumulative effect of the hardships the Applicant's spouse would experience due to the Applicant's inadmissibility, particularly in light of his age, medical condition, and length of residence in the United States, is beyond the hardship commonly experienced as a result of

[1] The youngest child is a U.S. citizen by birth, another is a lawful permanent resident, and the immigration status of the Applicant's remaining four children is not documented in the record.

inadmissibility or removal of a spouse. The documentation on record, when considered in its totality, reflects the Applicant has established that her spouse would suffer extreme hardship were the Applicant unable to reside in the United States.

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 299 (BIA 1996). We must "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). In evaluating whether to favorably exercise 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, recency 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).

*Id.* at 301 (citations omitted). We must also consider "[t]he underlying significance of the adverse and favorable factors." *Id.* at 302. For example, we assess the "quality" of relationships to family, and "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed]." *Id.* (citation omitted).

The favorable factors in this matter are the extreme hardships the Applicant's spouse will face if the Applicant were to reside in Mexico; the Applicant's lack of any criminal record; support letters evidencing good character and service to the community; the couple's nearly 40 years together; strong U.S. ties, including all of their six children and at least one grandchild; and residence here for over 20 years. The unfavorable factors in this matter are the Applicant's unlawful presence and employment. 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 Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has met that burden. Accordingly, we will sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of A-B-M-V-*, ID# 15472 (AAO Feb. 23, 2016)