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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H6

DATE: JUL 01 20[redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Ground 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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 applicant is married to a United States citizen (USC) and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 with her USC spouse.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 8, 2008.

On appeal, counsel asserts that the Field Office Director failed to consider the "severe mental health and emotional impact" denial of the applicant's waiver would have on the applicant's spouse. *See Form I-290B, Notice of Appeal*, and accompanying statement from counsel dated January 8, 2009.

The record includes, but is not limited to, letters from the applicant's spouse, copies of Earnings and Leave Statements for the applicant's spouse, a copy of a psychological evaluation of the applicant's spouse by [redacted], dated December 29, 2008, copies of medical and laboratory reports relating to the applicant from a laboratory in Mexico,[1] and copies of country condition reports on Mexico. The entire record was reviewed and considered in rendering this decision on 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- . . . .

[1] The medical documentation is in Spanish with no accompanying English translation. 8 CFR section 103.2(b)(3) provides that any document containing foreign language submitted to United States Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

> (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.
>
> . . . .
>
> (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 [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.

In the present case, the applicant claims that she entered the United States without being inspected and admitted or paroled in November 2002. The record reflects that the applicant's United States citizen spouse filed a Form I-130 on the applicant's behalf, which was approved on April 24, 2006. In September 2007, the applicant voluntarily departed the United States. On September 27, 2007, the applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act by a United States Consular Officer in Ciudad Juarez, Mexico. On October 15, 2007, the applicant filed a Form I-601 application. On December 8, 2008, the Field Office Director denied the Form I-601 application, finding that the applicant failed to establish extreme hardship to her spouse. The applicant accrued unlawful presence from January 9, 2004, the day the applicant turned 18 years old until September 2007, when she voluntarily departed the United States. The applicant's unlawful presence for more than one year and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. Thus, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

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. 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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.

In this case, the record reflects that the applicant's spouse, [redacted] is a 33-year-old citizen of the United States. The applicant and her husband were [redacted] on November 3, 2005. The applicant's spouse stated that he and the applicant expected their first child

sometime in 2009; however, no further information has been provided regarding this matter. The applicant's spouse states that he is suffering extreme emotional and financial hardship as a result of family separation and the denial of the applicant's waiver request.

Regarding the emotional and financial hardship of separation, the applicant's husband states that he misses the applicant, that he is concerned about the health and safety of the applicant and their unborn child in Mexico, and that he is concerned that the applicant is not receiving adequate medical attention for her pregnancy. The applicant's spouse also states that he is supporting two households, that he is paying out of pocket for the applicant's medical care in Mexico despite the fact that he has medical coverage for her through his employer in the United States, that he has exhausted their life savings and that "it has been a financial night mare." *Letter from* [redacted] dated December 8, 2008. The applicant's spouse also states that he is concerned about the safety of the applicant in Mexico because Mexico is a dangerous place to live, that he is terrified of the possibility of living in Mexico, and "the constant stress of having to be hyper vigilant and worrying about my safety will have an inexplicably negative impact on my health." *Letter from* [redacted] dated November 11, 2007.

The record contains a copy of a psychological evaluation of the applicant's spouse by [redacted] San Diego, California. In this report, the applicant's spouse specifically stated that he was worried about the conditions in Mexico and that he fears for the safety of the applicant. He also recounted specific bad things that he saw or experienced when he resided or when he was visiting the applicant in Mexico. [redacted] stated that the applicant's spouse is having problems with sleeping at night, that he has headaches, feelings of nervousness and shakiness inside and at times his heart is pounding or racing. [redacted] diagnosed the applicant's spouse with Generalized Anxiety Disorder and Major Depressive Disorder. [redacted] stated that these conditions are directly attributable to the stress of separation from the applicant and his desperation over the hardship he faces if the applicant is found inadmissible to the United States. *See Psychological Evaluation of* [redacted] *by* [redacted] dated December 29, 2008. [redacted] discussed in detail the applicant's spouse's past traumatic experiences in Mexico including separation from his father at a very young age, and why his current concerns of separation from the applicant are made worse because of his background. [redacted] further stated "the current situation of physical separation from his wife, the uncertainties of the future, the threat of losing all he has struggled to create, and the fears for his own safety and that of his family in Mexico are placing him in a situation to extreme stress. That stress is manifesting in serious psychological symptoms, sufficient to diagnose Generalized Anxiety Disorder and Major Depressive Disorder." *Id.* [redacted] recommended that the applicant's spouse consult with a doctor through his health plan to see if some medication can be prescribed to help him sleep. [redacted] concluded that the hardship and the negative consequences for the applicant's spouse could be avoided if the applicant were able to reestablish her life together with her husband in the United States. *Id.*

Based on the detailed statement from the applicant's spouse, the psychological evaluation report from [redacted] and the applicant's spouse's past traumatic experiences, the AAO finds that the applicant has provided evidence of serious emotional, and psychological hardship to her spouse as a result of her inadmissibility. Accordingly, the AAO determines that denial of the applicant's waiver

request will impose hardship to the applicant's spouse that is beyond the common results of removal or inadmissibility to the level of extreme hardship.

The applicant's spouse states that he cannot relocate to Mexico to live with the applicant for the following reasons: he was born in the United States, he has significant family ties in the United States, he has a good paying job with benefits, which he does not want to forfeit, he is concerned that he may not be able to get a decent job in Mexico, and he is very concerned about the level of violence, lack of security and the increase in gang related violence in Mexico. *See Letter from* [redacted], dated December 8, 2008. The applicant's spouse also states "In the last twelve months we've had to relocate 3 times in a different parts of Tijuana, Mexico. . . the environment has been very dangerous, it's been very hard to adapt. We are really scared." *Id.* The record contains country condition reports about the lack of security and increased violence in Mexico.

As noted by the U.S. Department of State:

> Much of the country's narcotics-related violence has occurred in the border region. More than a third of all U.S. citizens killed in Mexico in 2010 whose deaths were reported to the U.S. government were killed in the border cities of Ciudad Juarez and Tijuana. Narcotics-related homicide rates in the border states of Nuevo Leon and Tamaulipas have increased dramatically in the past two years.

Travel Warning – Mexico, U.S. Department of State, Bureau of Consular Affairs, dated April 22, 2011.

The AAO finds that based on the significant family ties the applicant's spouse has in the United States, his long-term employment with benefits and the documented high level of violence and crime in Mexico targeted at U.S. citizens, and his concern for his and his family's safety and security in Mexico, the applicant has demonstrated that her spouse would experience extreme hardship if he were to relocate to Mexico to live 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 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 negative factors in this case are the applicant's prior entry in the United States without inspection and her unlawful presence in the United States. The positive factors in this case include the extreme hardship the applicant's United States citizen spouse will suffer if the waiver is denied, and her apparent lack of criminal records.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. 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 her burden and the appeal will be sustained.

ORDER: The appeal is sustained.