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

U.S. Citizenship and Immigration Services

H6

[redacted]

Date: AUG 29 2011 Office: CIUDAD JUAREZ FILE: [redacted]

IN RE: Applicant: [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 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 waiver application will be approved.

The record reflects that the applicant is a native and citizen of Mexico who entered the United States without authorization in 2002 and did not depart the United States until 2005. The applicant was thus 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. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with her U.S. citizen spouse and children, born in 2008, 2005 and 2004.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601) accordingly.[1] *Decision of the Field Office Director,* dated March 26, 2009.

In support of the appeal, counsel for the applicant submits the following: a brief; medical documentation pertaining to the applicant's child, [redacted] medical documentation pertaining to [redacted] the applicant's mother-in-law; and a psychological evaluation for the applicant's spouse, dated April 20, 2009. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> 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

[1] In his decision to deny the applicant's Form I-601, the field office director concurrently denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal. The basis for the I-212 filing by the applicant was her attempt to enter the United States with a valid nonimmigrant visa in July 2006 and her expeditious removal based on her previous period of unlawful presence in the United States. *Notice to Alien Ordered Removed/Departure Verification,* dated July 22, 2006 and *Record of Sworn Statement in Proceedings,* dated July 22, 2006. As the record indicates that the applicant has remained outside of the United States since her removal in 2006, she has satisfied the five year bar and no longer needs an approved Form I-212. As such, the Form I-212 is deemed to be moot.

> 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 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...

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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant, the children or her mother-in-law can be considered only insofar as it results in hardship to a qualifying relative. 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.

The applicant's U.S. citizen spouse asserts that he will suffer extreme emotional and financial hardship were he to reside in the United States while the applicant remains abroad due to her inadmissibility. In a declaration he states that he needs his wife's love, support and encouragement and a prolonged separation will cause him hardship. He notes that he is unable to return to Mexico regularly to visit his wife because he has depleted his savings and is unable to maintain his job if he keeps taking time off. In addition, the applicant's spouse references the problematic country conditions in Mexico, including violence and kidnappings and his concerns for his wife's safety and well-being while she is residing there. Moreover, the applicant's spouse explains that prior to his wife's departure, he was the sole financial provider for his family while his wife took care of his children but due to her absence, he is the primary caregiver and provider and such a predicament is causing him hardship. Finally, the applicant's spouse asserts that he is experiencing financial hardship as he is supporting two households, one in Mexico and one in the United States. *Affidavit of* [redacted]

On appeal, counsel further details that the applicant's youngest child, [redacted] was born with Down Syndrome and suffers from multiple health conditions, including clubbed feet and a heart defect.

Counsel notes that [redacted] had open-heart surgery in 2008 for her heart condition and is under the care of doctors at the [redacted] Children's Hospital. Counsel also contends that [redacted] is attending regular developmental occupational therapy sessions for her condition. Counsel asserts that [redacted] condition requires therapy and follow-ups with her doctors and the absence of her mother is causing her and the applicant's spouse hardship. *Brief in Support of Appeal.*

In support, documentation has been provided establishing [redacted] diagnosis of Down's Syndrome. See *Assessment/Evaluation Profile from* [redacted] *Rehabilitation Early Childhood Intervention Program,* dated January 23, 2009 and *Letter from* [redacted] *Rehabilitation Early Childhood Intervention Program,* dated April 24, 2009. In addition, a psychological evaluation has been provided from [redacted] explains that the applicant's spouse is suffering from Adjustment Disorder with Anxious and Depressed Mood and recommends that the applicant's spouse participate in weekly cognitive behavioral psychotherapy and obtain a psychiatric consultation. *Confidential Report of Psychological Evaluation,* dated April 20, 2009. Finally, documentation has been provided establishing that the applicant's eldest child, [redacted] suffers from Bilateral Club Foot, for which she had surgery but needs regular follow-ups with her physician. *Letter from* [redacted] *M.D.,* [redacted] *Pediatric Clinic,* dated February 20, 2008.

Based on the documentation provided with respect to [redacted] medical and developmental conditions, the gravity and unpredictability of the symptoms associated with her conditions, the short and long-term ramifications for those afflicted and the financial costs associated with the proper care and treatment of said medical conditions by specialists, the AAO concludes that the applicant's spouse would suffer extreme hardship were he to remain in the United States while the applicant resides abroad due to his inadmissibility. The applicant's spouse would be required to assume the role of primary caregiver and breadwinner to three young children, one who has significant medical conditions and developmental delays, without the complete support of the applicant. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

With respect to relocating abroad to reside with the applicant, counsel explains that the applicant's spouse's mother, who is over 90 years old, lives with her son as she is unable to live independently and, were he to relocate abroad to reside with the applicant, his mother would suffer hardship, thereby causing hardship to the applicant's spouse. *Supra* at 6. In addition, [redacted] contends that the applicant's spouse has extensive ties in the United States, including gainful employment and the presence of his elderly mother and five siblings. *Supra* at 2. Finally, the AAO notes that the U.S. Department of State has issued a travel warning for Mexico specifically referencing Tamaulipas, where the applicant resides.[2]

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[2] As noted by the U.S. Department of State:

> You should be especially aware of safety and security concerns when visiting the northern border states of Northern Baja California, Sonora, Chihuahua, Nuevo Leon, and Tamaulipas. 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

The record establishes the applicant's spouse's extensive ties to the United States and the applicant's child's medical and developmental conditions, which require continuing treatment by professionals familiar with her conditions. Moreover, the AAO recognizes the problematic conditions in Tamaulipas, Mexico, as noted by the U.S. Department of State in its Travel Warning. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she 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).

> 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).

> 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, dated April 22, 2011.

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO 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 hardship the applicant's U.S. citizen spouse and children would face if the applicant were to reside in Mexico, regardless of whether they accompanied the applicant or stayed in the United States, the applicant's child's serious medical and developmental conditions, the applicant's community ties and the passage of more than eight years since her unauthorized entry to the United States. The unfavorable factors in this matter are the applicant's unauthorized entry to the United States in 2002, unlawful presence while in the United States and her removal in 2006.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.

ORDER: The appeal is sustained. The waiver application is approved.