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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H6

DATE: NOV 0 8 2011 OFFICE: CIUDAD JUAREZ FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

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 and the waiver application will be approved.

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 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife and child.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated March 26, 2009.

The record contains: an affidavit from the applicant's spouse dated April 8, 2009; a statement from the applicant's spouse's clinical psychologist; copies of the applicant's spouse's medical records; financial documents including bank statements, income tax returns, and pay stubs; and a list of registered sex offenders living near the applicant's wife and child. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (B) ALIENS UNLAWFULLY PRESENT.-
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> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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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> . . . .
>
> (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's qualifying relative in this case is his wife, a U.S. Citizen living in [redacted]. 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 alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

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 record reflects that the applicant is a thirty-one year-old native and citizen of Mexico who entered the United States in May 1999 without inspection. The applicant accrued unlawful presence in the United States from May 1999 until February 2008, when the applicant voluntarily departed the United States. The applicant's spouse is a U.S. Citizen. The applicant and his spouse have one minor child, who resides with his spouse in [redacted]

The applicant's spouse contends in her affidavit that she is suffering from financial hardship due to the separation from the applicant. *See Affidavit from* [redacted], dated April 8, 2009. In support of this contention, the applicant's spouse submitted a copy of a 2008 income tax return, copies of bills and checks, pay stubs, and a report of monthly expenses over a 15-month period, from January 2008 to March 2009. This report indicates that the applicant's spouse has monthly expenditures averaging nearly $1,700, while copies of pay stubs indicate that the applicant's spouse is earns between $260 and $280 per week.

In addition, the applicant's spouse contends in her affidavit that she is suffering emotional hardship due to the separation from the applicant. *See Affidavit from* [redacted] dated April 8, 2009. A letter from a licensed clinical psychologist indicates that the applicant's wife has been diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood, due to her separation from her husband. The letter states that the applicant's wife suffers from migraine headaches and the applicant's spouse's doctor believes that the stress and worry about the applicant's situation have caused her migraines to become more severe. *See Letter from* [redacted], dated October 8, 2008. The psychologist recommended the applicant's wife see her family physician to start on antidepressant medication. The record indicates that the applicant's wife consulted her family physician on March 31, 2009, and, based upon the diagnosis provided by the clinical psychologist, she was prescribed with the antidepressant drug Amitripytyline. *See Medical report of* [redacted], dated March 31, 2009. The applicant's spouse submitted a letter from her employer, indicating that the applicant's spouse conducts training and orientation for new employees at the National Beef Packing company, and is an invaluable member of the Human Resources staff at the company. *See Letter of* [redacted], dated August

20, 2008. While the record contains positive statements from the applicant's spouse's supervisor regarding her employment, the applicant's spouse stated that her supervisor notified her that if she keeps missing work due to her migraines and depression, she may be discharged. *See Affidavit from* [redacted] dated April 8, 2009. A co-worker of the applicant's spouse has indicated that due to the separation from the applicant, the applicant's spouse misses work often and has trouble focusing on her work. *See Statement of* [redacted] dated April 11, 2009.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant be unable to reside in the United States. The applicant's spouse has established that she is suffering financial hardship, and that she has a medical condition which is exacerbated by the stress due to her separation from the applicant. In addition, the applicant's spouse contends that she fears for the applicant's safety in Mexico, and that this fear is exacerbating her stress and emotional condition. When considered in the aggregate, the medical and financial hardship she is experiencing, when combined with the emotional hardship resulting from separation from the applicant, rises to the level of extreme hardship if the applicant's spouse remains in the United States without the applicant.

The applicant's spouse, a U.S. Citizen who has resided in the United States since 1998, has strong family ties in the United States. In addition to her minor daughter, she has her parents and one brother who are lawful permanent residents living in Liberal, Kansas, and three other younger siblings are U.S. Citizens. In addition to the qualifying relative's strong ties to the United States, the applicant's spouse contends that she would fear for her safety in Mexico based upon the high rate of violent crime in Mexico. The AAO notes that the U.S. Department of State has issued a travel warning for Mexico, stating that crime and violence in Mexico is widespread.[1] When considered in the aggregate, the hardships resulting from separation from her family and having to readjust to conditions in Mexico after thirteen years on the United States, as well as the concern she would have for her safety and that of her child, rise to the level of extreme hardship if the applicant's spouse relocated to Mexico to reside with the applicant.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his 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

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

> ...crime and violence are serious problems and can occur anywhere. While most victims of violence are Mexican citizens associated with criminal activity, the security situation poses serious risks for U.S. citizens as well.

Travel Warning-Mexico, U.S. Department of State, dated April 22, 2011.

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).

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 hardships the applicant's U.S. citizen spouse and child would face if the applicant were to reside in Mexico, regardless of whether they accompanied the applicant or remained in the United States; the applicant's apparent lack of a criminal record; and the passage of more than ten years since the applicant's unlawful entry to the United States. The unfavorable factors in this matter are the applicant's unlawful entry into the United States and unlawful presence while in the United States.

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 his 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 application approved.

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