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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

PUBLIC COPY

[redacted]

H6

Date: MAR 01 2012 Office: MEXICO CITY, MEXICO 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, 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 his last departure from the United States. The applicant is married to a United States citizen 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 his spouse.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 8, 2009.

On appeal, the applicant, through counsel, asserts that the Field Office Director erred in finding the applicant's wife would not suffer extreme hardship, "erred in his analysis and review of the record," and "did not apply the law to the facts of the case." *Form I-290B*, dated October 7, 2009.

The record includes, but is not limited to, statements from counsel and the applicant's wife, letters of support for the applicant and his wife, psychological and medical documentation for the applicant's wife, insurance documents, and country conditions documents on Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) 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-
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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 [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 record reflects that the applicant entered the United States in August 2001 without inspection. In June 2008, the applicant departed the United States. The applicant accrued unlawful presence from August 2001, the date he entered the United States without inspection, until June 2008, the date he departed the United States. The applicant is attempting to seek admission into the United States within ten years of his June 2008 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission within 10 years of his departure from the United States.

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 United States Citizenship and Immigration Services (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 of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. *Supra* at 565. 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 a statement dated November 3, 2009, the applicant's wife states she was in Mexico for a month and it would be impossible for her to relocate there. She claims that the situation in Mexico, and especially where the applicant resides, has become increasingly dangerous. She states that she found her husband sleeping behind "a locked bedroom door with a loaded shotgun" because of the extreme level of crime in the area, and the stress of living in "hyper-vigilance" was terrible. The AAO notes that on February 8, 2012, the Department of State issued a travel warning to United States citizens about the security situation in Mexico. The warning states that "the Mexican government has been engaged in an extensive effort to counter [Transnational Criminal Organizations] which engage in narcotics trafficking and other unlawful activities throughout Mexico.... As a result, crime and violence are serious problems throughout the country and can occur anywhere." The warning states United States citizens have been the victims of "homicide, gun battles, kidnapping, carjacking and highway robbery." The warning also states that the rise in "kidnappings and disappearances throughout Mexico is of particular concern."

In a statement dated October 7, 2009, applicant's former counsel states the applicant's wife has no ties to Mexico and she is extremely involved in her community. In an undated statement, the applicant's wife states she does not believe her experience and skills would be useful in Mexico. She claims that even if she did obtain employment in Mexico, she may not be able to work legally, because she is not a Mexican citizen. Additionally, in the same statement, the applicant's wife states that she cannot move to Mexico

because of her age and inability to speak Spanish adequately. She also states that when she spent six weeks in Mexico, she was concerned for her elderly parents, especially for her father who has heart problems. The applicant's wife states she suffers from various medical problems, including cystic tumors in her breasts and arthritis. Medical documentation in the record establishes that the applicant's wife has had numerous medical procedures, including a hysterectomy and fibroids removed. Additionally, the record establishes that the applicant's wife was prescribed medication for anxiety and stomach ulcers. The applicant's wife claims that she is more comfortable with the care she receives in the United States, and she has been going to the same doctor's office for twenty years.

Based on her safety concerns in Mexico; her lack of ties to Mexico; her lack of Spanish language skills; her separation from her family in the United States, including her elderly parents; her medical issues and possible disruption of her medical treatment; and her employment issues; the AAO finds that the applicant's wife would suffer extreme hardship if she were to join the applicant in Mexico.

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States, she states she is suffering emotionally, physically, mentally, and financially. Counsel states the applicant's physical and mental health have been compromised by the separation from the applicant. In a psychological evaluation dated November 2, 2009, therapist [redacted] diagnosed the applicant's wife with adjustment disorder, generalized anxiety disorder, and major depressive disorder. Additionally, [redacted] reports that the applicant's wife is concerned that her depression and anxiety symptoms will affect her professional responsibilities, and she may lose her employment. The applicant's wife states she worries for the applicant's safety in Mexico, and sometimes she is so overcome by her fears that she cannot function. The AAO acknowledges that the applicant's wife is suffering emotionally from being separated from the applicant.

Applicant's former counsel states the applicant's wife's ministry is suffering without the help of the applicant. The applicant's wife states the applicant helps her run a shelter for vulnerable families. She states it would be impossible to support the women in her shelter alone and have no one to rely on for emotional support. Additionally, former counsel states the applicant's wife had to forego her master's degree and she lost her full scholarship after the applicant returned to Mexico. Further, former counsel states the applicant's wife is suffering financial hardship in having to support two households. The applicant's wife states their personal finances are in shambles and she has to borrow money to pay her bills. She also states that it is impossible to visit the applicant very often because traveling to Mexico is so expensive. She also states her medical care expenses were covered by the applicant's health insurance, and without his insurance, paying her medical expenses is a significant hardship.

The AAO finds that when the applicant's spouse's hardships are considered in the aggregate, specifically her mental health issues; medical issues; financial issues; and her concern for the applicant's welfare in Mexico, the record establishes that the applicant's wife would face extreme hardship if she remained in the United States in his absence. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(a)(9)(B)(v) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h)(1)(B) 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 adverse factors in the present case include the applicant's entry without inspection, unauthorized employment, and unlawful presence. The favorable and mitigating factors are the applicant's United States citizen wife; the extreme hardship to his wife if he were refused admission; the absence of a criminal record; his community service; and his good moral character as described in several letters of support.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

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