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

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PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

#6

DATE: MAR 28 2012 OFFICE: MEXICO CITY 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,

Ellen C. Johnson

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 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 her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. Citizen spouse and child.

The Field Office Director concluded that there was insufficient evidence of extreme hardship to a qualifying relative given the applicant's inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated September 29, 2009.

On appeal, the applicant's spouse indicates if the I-601 waiver application remains denied, he would relocate to [redacted] Mexico to live with the applicant and their U.S. Citizen child. The spouse contends there is inadequate health care in [redacted] and that the applicant and their child have been ill because of unsanitary conditions. The spouse adds that these illnesses and other costs have caused him financial and emotional strain. He adds that the strain of separation has already affected his job performance as well as his physical health. The spouse further indicates that if he were to relocate to [redacted] he would lose his job, all benefits which come with that job, and his ability to support the family.

The record includes, but is not limited to, statements from the applicant and her spouse, letters from family, friends, physicians, and employers, evidence of birth, marriage, residence, and citizenship, financial documents, medical records, photographs, documents related to property ownership, educational records, evidence of the spouse's trips to Mexico, notes from psychological evaluations, articles on the economy and country conditions in Mexico, and other applications and petitions filed on behalf of the applicant. The entire record was reviewed and considered in rendering a decision on the 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-
>
> . . . .
>
> (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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

In an immigration interview the applicant admitted under oath that she entered the United States without inspection in August 2004, and remained until she returned to Mexico in August 2008. The applicant does not contest inadmissibility on appeal. She is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen 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 applicant's spouse submits that the current separation from the applicant is causing him financial, familial, medical and psychological difficulties. He states that he is a personal banker at [redacted] and earns a good income of $31,400 as his base salary plus performance based sales incentive bonuses. The spouse indicates that his performance at work, and as a consequence his compensation, has declined significantly because of the stress due to the separation. Letters from his employer are submitted in support of these assertions. The spouse adds that the stress has affected his physical health as well. A doctor opines that the spouse has neuro-dermatitis secondary to anxiety disorder, and that the anxiety disorder has been caused by the stress of having the applicant out of the country. The doctor also indicates the spouse has chronic urticaria, and that the condition worsens under stress. Photographs are submitted of the spouse's skin condition. A copy of a handwritten initial psychological evaluation is also submitted in support of assertions of psychological hardship, as well as copies of prescription scripts.

The applicant's spouse explains that he worries about the applicant and their daughter's health and welfare in Mexico, and submits evidence showing the daughter has already experienced lower respiratory infections, gastroenteritis, and parasites. The spouse indicates his daughter relocated to Mexico after trying to live without her mother in the United States, because the spouse could no longer balance his responsibilities as a father with other household duties such as cooking meals, doing laundry, and cleaning the house. He adds that financially, paying for child care was

unaffordable, and submits evidence on child care expenses in [redacted] Texas. The spouse asserts that the applicant's absence has affected other members of his family in addition to his daughter, because the applicant used to help take care of his mother, who has high blood pressure and diabetes, and his father, who has poor eyesight and cataracts.

The spouse indicates he would experience significant hardship upon relocation to [redacted] Mexico where both he and the applicant were born. He explains he would lose his job at [redacted] bank, as well as all his retirement and health benefits. He asserts that crime is very high in [redacted], and that sanitation is so poor that his daughter has experienced several health problems. The spouse further states that educational opportunities for his daughter are insufficient in [redacted] and that he worries about her future if she were to remain there. The spouse submits articles on country conditions in support of his assertions.

The applicant's spouse has submitted sufficient evidence of financial hardship to support his assertions. The record contains detailed income statements, letters from his employers, a budget, and copies of household expenses. Furthermore, the spouse's assertions of financial difficulty are supported by evidence of record showing that a number of his accounts have gone into collection, evidence related to travel expenses, and documentation of money he spends supporting the applicant and their daughter in Mexico.

The spouse's contention that he experiences psychological and medical hardship given the current separation is similarly supported by evidence of record. The spouse's physician opines that his skin condition is exacerbated by stress, a conclusion which is corroborated by articles on the condition. The record also reflects that the applicant's spouse takes several medications for his psychological difficulties, and those difficulties have exacerbated his medical issues as well as his job performance.

Given the evidence of record, we find that the applicant's spouse has demonstrated that his hardship rises above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record contains sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without her spouse.

The record also supports a finding of extreme hardship upon relocation to [redacted] Mexico. Although the applicant's spouse was born in [redacted] Mexico, records show he has lived in the United States since he was seven years old. He has submitted evidence which demonstrates that relocation would result in leaving his family residing in the United States in addition to severing ties with his church, in which he is very active. Moreover, the spouse would lose his job with [redacted] along with the job's benefits, and he would relocate to an area which the U.S. Department of State confirms in a travel warning is dangerous. The safety situation in [redacted] Mexico adds to medical difficulties the spouse's child has experienced because of poor

sanitation. Given the evidence of record, the AAO therefore concludes that the applicant's spouse would experience extreme hardship upon relocation to Mexico.

Considered in the aggregate, the applicant has established that her U.S. Citizen spouse would face extreme hardship if the applicant's waiver request is denied.

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 applicant's adverse factors include her entry without inspection and unlawful presence in the United States. The favorable factors in her case are the extreme hardship to her U.S. Citizen spouse, her lack of a criminal record, evidence of service to her church, and evidence of the applicant's good character as found in letters from family and friends.

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.