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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

[redacted]

#6

DATE: MAY 03 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 (the Act), 8 U.S.C. section 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico. She was 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 one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen and has three U.S. citizen children. She 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 25, 2010.

On appeal, counsel for the applicant addresses the hardship factors in the case, asserts that the record demonstrates that a qualifying relative will experience extreme hardship due to the applicant's inadmissibility and submits additional evidence to address the Field Office Director's conclusions and corroborate the applicant's assertions of hardship to her qualifying relative. *Attachment, Form I-290B*, dated February 24, 2010.

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

> (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.
>
> . . . .

The record indicates that the applicant entered the United States without inspection in February 2000 and remained until she departed in July 2008. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, counsel's brief; statements from the applicant's spouse; statements from friends, family members and the children of the applicant; employment verification letters for the applicant; a psychological evaluation of the applicant's spouse by [redacted] dated February 23, 2010; documentation verifying the birth and school ages of the applicant's older

daughter and stepson; copies of money transfer receipts; copy of financial records related to financial hardship, such as an unemployment income statement, bank account statements, tax returns, pay stubs, receipts for pawned jewelry, and copies of bills for household utilities; photographs of the applicant, her husband and their children; medical receipts for prescriptions purchased in Mexico pertaining to the applicant and her daughter; a statement from the applicant's older daughter's school teacher; photographs of the conditions in Mexico; and a medical statement from the applicant's older daughter's doctor.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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. Hardship to the applicant or her children 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.

Counsel for the applicant asserts the applicant's spouse would experience financial, physical and emotional hardship if he relocates to Mexico with the applicant. *Brief in Support of Appeal*, dated February 24, 2010. Counsel points out that the applicant's spouse has resided in the United States for more than 43 years, and is 62 years of age (64 years of age as of the date of this decision). He states that, due to the applicant's age and long-term residence in the United States, he would have a difficult time finding employment and adjusting to life in Mexico. Counsel states that the applicant's spouse has several grown children, as well as other family members who reside in the United States, and that having to relocate to Mexico would result in separation from his U.S. family. Counsel states that the applicant's spouse has been caring for his parents for the last ten years and that he

would have to separate from them in order to relocate, and that, due to the fact that the applicant's spouse has numerous family members in the United States he would be unable to support them financially due to the lower wages and lack of economic opportunities in Mexico.

In an October 15, 2008 statement, the applicant's spouse indicates that he and the applicant have discussed the possibility of living in Mexico but that moving to Mexico would not be safe for their family. He recounts that in July 2008, he and his family were robbed by three armed men after purchasing groceries near the town where the applicant currently resides.

The record contains statements from the applicant's spouse's family members attesting to his care for members of the family and to the presence of the applicant's family in the United States and the lack of family ties he has to Mexico. While these statements are not objective evidence of any financial or physical support the applicant's spouse may provide for his parents, they are nonetheless sufficient to demonstrate that he has strong family and community ties to the United States. This hardship factor will be given consideration when aggregating the impacts upon relocation.

The record also contains photographs of the conditions in Mexico where the applicant's spouse would reside with the applicant, as well as documentation from the applicant's spouse's older daughter's doctor stating that she has experienced frequent illness and may a have urinary tract deformity. While children are not qualifying relatives in this proceeding, the AAO can reasonably determine that the medical needs of the applicant's child would result in an indirect hardship for the applicant's spouse if he were to relocate to Mexico with the applicant.

The AAO further notes that the U.S. Department of State has issued a travel warning for Mexico, last updated on February 8, 2012. The warning, which advises U.S. citizens of the increase in drug-related violence across Mexico, specifically indicates that the State of Chihuahua, where the applicant and her children are residing, is of special concern.

When the AAO takes into account the applicant's spouse's age and long-term residence in the United States, his lack of family ties to Mexico, his family ties to the United States, the medical needs of his older daughter, and conditions in Mexico, the AAO concludes that the applicant's spouse would experience extreme hardship if he relocates.

With regard to hardship upon separation, counsel for the applicant asserts that the applicant's spouse would experience financial, emotional and physical hardship due to the applicant's inadmissibility. Counsel asserts that the applicant's spouse is currently struggling to earn sufficient income to support his wife and daughters in Mexico while providing for the teenage son who resides with him. Counsel also asserts that the applicant's spouse is struggling emotionally, and experiencing symptoms of depression and anxiety, which have affected his performance at work.

The record contains a psychological assessment of the applicant's spouse from [redacted] The report concludes that the applicant's spouse is experiencing Major Depressive Disorder. The record also contains numerous statements from family members and friends of the

applicant's spouse attesting to the emotional hardship he has suffered due to the loss of his previous wife from cancer and the separation he now endures. There is also a statement from [redacted] dated February 2, 2010, noting that the applicant's spouse has had to have several counseling sessions. This evidence is sufficient to establish that the applicant's spouse is experiencing emotional hardship as a result of his separation from the applicant and will be considered when aggregating the impacts of separation.

The record contains copies of pay stubs, employment verification letters and tax documentation. These documents indicate that the applicant's spouse has struggled to remain employed, and that in 2009 he earned around $13,000 and received $9,000 in unemployment benefits for a total income of $22,000. In addition, the record contains copies of money transfer receipts to the applicant in Mexico, corroborating that the applicant's spouse is supporting two households, one in Mexico and one in the United States. The receipts indicate that the applicant transmitted roughly $1,600 to the applicant in Mexico between March 24, 2009 and January 10, 2010. Based on this evidence the AAO concludes that the applicant's spouse is experiencing some financial impact due to the applicant's departure, a factor that will be considered when aggregating the impacts upon separation.

The applicant's spouse has expressed anxiety and fear for the safety of the applicant and his daughters in Mexico. As noted above, hardship to the applicant or her children may be considered in this proceeding only to the extent that it affects the qualifying relative. However, the AAO takes note of the previously discussed Department of State travel warning for Mexico, and acknowledges the emotional hardship resulting from the exposure of the applicant and her daughters to the drug-related violence in the State of Chihuahua.

Having considered the multiple hardship factors affecting the applicant's spouse as a result of his separation from the applicant, the AAO finds that when they and the hardships normally created by the separation of families are considered in the aggregate, the record establishes that the applicant's spouse would experience extreme hardship if he remains in the United States.

Although the applicant has established a qualifying relative will experience extreme hardship upon relocation and separation, it must still be determined whether the applicant warrants a waiver 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 AAO finds that the unfavorable factors in this case include the applicant's unlawful presence for which she now seeks a waiver, her entry without inspection and her unlawful employment. The favorable factors in this case include the applicant's U.S. citizen spouse and children, the extreme hardship her spouse would suffer if the waiver application is denied; her older daughter's health problems, the absence of any criminal record while in the United States and the good moral character referenced in the statements written by family and friends. Although the applicant's immigration violations are a serious matter, the favorable factors in this case outweigh the negative factors. Therefore, favorable discretion will be exercised.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.