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

(b)(6)

U.S. Citizenship and Immigration Services

Date: APR 2 4 2013 Office: ANAHEIM FILE:

IN RE: Applicant:

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:

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Affairs Support Branch on behalf of the Field Office Director, Ciudad Juarez, 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 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 again seeking admission within ten years of her last departure from the United States. The record reflects that the applicant entered the United States without inspection in 2000, remaining until 2011. The applicant is the spouse of a United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated July 23, 2012.

On appeal counsel for the applicant asserts the director's decision failed to consider psychological hardship to the spouse. With the appeal counsel submits a brief; birth certificates of the spouse's children and his divorce decree; a statement from the spouse's medical doctor; medical documentation for the applicant's spouse; financial documentation for the spouse; country information for Mexico; a psychosocial evaluation of the spouse; and letters of support for the applicant. The entire record was reviewed and considered in rendering this decision.

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-
> >
> > . . . .
> >
> > > (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.

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. The applicant's wife 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

On appeal counsel asserts the applicant's spouse is experiencing emotional and financial hardship without the applicant in the United States. Counsel asserts that the spouse feels unable to be responsible for his son with the applicant in Mexico. Counsel contends the spouse is depressed as his son is growing up without his father and is forced to see his son endure psychological hardship. Counsel asserts that the spouse has medical problems including gout and high cholesterol, is unemployed with financial problems, and is unable to travel to Mexico due to violence. He further notes that a therapist diagnosed the applicant's spouse with high levels of anxiety, depression and other psychological symptoms. Counsel contends that Mexico is impoverished so the applicant's spouse and family would not be able to survive and that because of a poor education system he will bring his son back to the United States for school. Counsel further contends the applicant's spouse cannot reside in Mexico because his elderly parents in the United States need him to help and he could not pay child support for his three children in the United States from his previous marriage. Counsel asserts that the spouse cannot abandon his responsibilities in the United States.

In his declaration the applicant's spouse states that he cannot reside in Mexico because he has lived in the United States for 24 years. He states it would be difficult to support his family financially in Mexico because there are no jobs and high poverty, and because of a drug war that also causes him to worry about the safety of the applicant and their son. The spouse states that he wants his son to attend school in the United States but has only his elderly father to provide care as he cannot afford child care when working. The spouse asserts that he is financially responsible for his other three children but cannot take them to Mexico without his ex-wife's permission. The spouse states that he is currently unemployed, straining him financially and psychologically. The spouse contends that his health is getting worse as he suffers from gout, joint pain, swelling, sadness, depression, insomnia, and loss of appetite.

Along with medical documentation counsel submitted a letter from the spouse's doctor indicating the spouse has gout, major depression, generalized anxiety and suicidal ideation. The letter states that since separation from the applicant and their son the spouse's physical and mental health is

deteriorating, he is losing weight and having more gout attacks, and he is having trouble functioning at work and general society. A previous note from another doctor noted that the spouse relied on the applicant to care for his health. Documentation in the file notes the spouse's symptoms but not their severity, although other documentation indicates the spouse was at times unable to work.

A psychological evaluation from multiple visits indicates the spouse reported being traumatized by separation from the applicant and their son and reported the applicant as the main provider of family care for education, medical visits, organizing the home, and providing emotional support. The spouse reported that his fear for their safety in Mexico and over his ability to maintain two homes causes him nervousness and a lack of sleep. The evaluation notes that the spouse is a seasonal worker with unemployment benefits who in Mexico would lose access to medical care and his family doctor. The evaluation notes that the applicant attends counseling for stress and takes medication, but deteriorated after the applicant's visa denial. The evaluation states that tests indicated the spouse has severe depression and symptoms affecting his ability to function, making it challenging for him to go to work. The evaluation states the spouse is overwhelmed by the separation from the applicant and that there is a correlation of gout and cholesterol with high stress and anxiety.

A psychological evaluation of the son in Mexico shows he has not adapted to Mexico and is in a constant crisis of anxiety while the applicant is unstable psychologically due to concerns for her son.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse is experiencing extreme hardship resulting from his separation from the applicant. In reaching this conclusion, the AAO notes the spouse's medical and emotional condition, and his financial status. Documentation from the spouse's doctors and multiple visits with a therapist indicates the spouse is suffering extreme emotional hardship due to separation from the applicant and their son. Further, the record shows that in addition to his own medical costs the applicant's spouse sends money to the applicant in Mexico, thus supporting two households.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Mexico. Given the spouse's long-time residence in the United States and close familial ties, including his parents and his three minor children from his previous marriage, the spouse would experience extreme hardship if he were to relocate to Mexico to reside with the applicant due to her inadmissibility. Further, country information shows Mexico experiences continued crime and violence, high levels of poverty, and an often-poor quality education system, which would cause hardship to the applicant's son and by extension the applicant's spouse.

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 circumstances presented in this application rise to the level of extreme hardship.

The AAO 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(a)(9)(B) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 s/he is excluded and/or 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 unfavorable factor in this matter is the applicant's accrual of unlawful presence in the United States. The favorable factors are the hardship the applicant's husband would experience if the applicant is denied admission into the United States, letters of support from friends, and the applicant's lack of a criminal record. The AAO finds that although the immigration violations committed by the applicant are serious in nature and cannot be condoned, taken together the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met her burden of proving eligibility for a waiver of her ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. The Form I-601 appeal will therefore be sustained.

ORDER: The appeal is sustained.