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

U.S. Citizenship
and Immigration
Services

[redacted]

H6

FILE: [redacted] Office: MEXICO CITY Date: DEC 06 2010

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:

[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,

for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City. 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 for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and son.

The field office director found that the applicant failed to establish extreme hardship to her husband and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director,* dated July 2, 2010.

On appeal, counsel for the applicant asserts that the applicant's husband will endure extreme hardship should the present waiver application be denied. *Brief from Counsel on Appeal.*

The record contains a brief from counsel; statements from the applicant, as well as the applicant's husband, mother- and father-in-law, pastor, brothers-in-law, aunt, uncle, cousins, friends, and sister-in-law; copies of photographs of the applicant and her family; copies of immigration documents and birth certificates for individuals who issued statements on behalf of the applicant; a copy of a marriage document for the applicant and her husband; a copy of a birth certificate for the applicant's son; letters from physicians who report that they see the applicant and her husband; copies of banking records for the applicant and her husband, and; documents relating to the applicant's family's expenses. The applicant further provided a document in a foreign language without a translation. Because the applicant failed to submit a translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. With the exception of the untranslated document, the entire record was reviewed and considered in rendering this decision.

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.

The record shows that the applicant entered the United States without inspection on January 1, 2005 and remained until July 2009. She reached 18 years of age on January 8, 2005. She accrued unlawful presence from the date she reached age 18 until she departed the United States, totaling over four years. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant does not contest her inadmissibility on appeal.

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 son can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and

not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

On appeal, counsel asserts that the applicant's husband will endure extreme hardship should the present waiver application be denied. *Brief from Counsel on Appeal.* Counsel explains that all of the applicant's husband's family members reside in the United States as lawful permanent residents or U.S. citizens, and that the majority of family members arrived in Texas in 1984. *Id.* at 2-3. Counsel adds that conditions in Mexico are poor, as evidenced by travel advisories issued by the U.S. Department of State and the experiences of the applicant's husband's relatives. *Id.* at 5. Council provides that denial of the waiver application would cause financial consequences for the applicant's husband, as he cannot relocate his landscaping business. *Id.* Counsel contends that the applicant's husband's family members value their close-knit relationships. *Id.* at 6. Counsel observes that courts and the Board of Immigration Appeals (BIA) place significant emphasis on family separation when assessing hardship. *Id.* at 7.

On October 27, 2010, counsel reported that the applicant's wife's family in Los Caobos, Montemorelos, Nuevo Leon, Mexico where the applicant is residing received a threatening telephone call demanding a ransom upon penalty of a drive-by shooting of their house. *Correspondence from Counsel*, dated October 27, 2010. Counsel asserted that the applicant and her husband have significant fear due to this event, and that the applicant's husband is more afraid than ever to travel to Mexico to visit the applicant and her son. *Id.* at 1.

The applicant's husband states that he and the applicant were married on December 23, 2004, and their son was born on April 24, 2006. *Statement from the Applicant's Husband*, dated July 31, 2010. He expresses that he loves his son, and that he has spent as much time with him and the applicant as possible. *Id.* at 2. He provides that all of his immediate family members reside in the Dallas, Texas area. *Id.* at 1. He explains that he, the applicant, and their son reside with his parents in order to share expenses. *Id.* He adds that his mother has mobility problems, and that the applicant assists her with chores. *Id.* He indicates that, should he relocate to Mexico, he will face remorse due to losing the ability to assist his parents. *Id.*

The applicant's husband expresses that he has tremendous anxiety due to the applicant and their son currently residing in Allende, Nuevo Leon, Mexico. *Id.* He asserts that he wishes to be with the applicant and their son, yet he is unable to obtain employment in Allende. *Id.* He explains that he operates a landscaping business, and that he cannot reestablish it in Allende due to the fact that people hire their own landscaping employees at low wages. *Id.* at 2. He further states that it would be dangerous for him to operate his business in Allende, as there are kidnappings and vandalism there, and that U.S. citizens are targets. *Id.* He adds that life has become difficult in Allende, that a police officer was recently murdered, and there is a strictly enforced curfew. *Id.* He provides that travel advisories from the Department of State report dozens of unsolved kidnappings of U.S. citizens. *Id.*

The applicant's father-in-law explains that the applicant and the applicant's husband reside with him and his wife, and that the applicant's husband assists them by paying half of the household expenses. *Statement from the Applicant's Father-in-law*, dated July 31, 2010. He adds that he occasionally receives economic support from his other children, yet it is not enough to meet the portion of the bills funded by the applicant's husband. *Id.* at 1. The applicant's father-in-law states that he and the

applicant's mother-in-law have five children, 11 grandchildren, and one great grandchild, all of who are U.S. citizens or lawful permanent residents. *Id.* He explains that all of their grandchildren except one reside in the Dallas, Texas metropolitan area. *Id.*

The applicant's father-in-law describes an incident in which he and the applicant's mother-in-law traveled to Allende, Nuevo Leon, Mexico to visit the applicant and her son, and there was rapid gunfire as they approached the bus terminal in Monterey, Mexico. *Id.* He states that he and the applicant's mother-in-law subsequently began flying to Mexico due to their fear, yet the cost has forced them to reduce the frequency with which they see the applicant and her son. *Id.* at 1-2.

The applicant's father-in-law attests to the emotional difficulty the applicant's husband is suffering due to separation from the applicant and their son. *Id.* at 2.

The applicant provided numerous letters in support of the waiver application from her and her husband's friends, relatives, and pastor. These letters support that the applicant's son and husband are enduring significant emotional hardship due to the separation of their family. They further support that the applicant's husband will endure economic difficulty and possible challenges acting as a single parent should the applicant remain outside the United States. They attest that the applicant's and her husband's family members are close. They further explain that the applicant made a strong contribution to her household including caring for her son in United States while her husband worked.

Upon review, the applicant has shown that her husband will face extreme hardship should the present waiver application be denied. The applicant has shown that her husband will endure extreme hardship should he remain in the United States without her. The record contains references to dangerous conditions in Mexico. The applicant's father-in-law describes an event in which he and the applicant's mother-in-law were placed in a position of avoiding gunfire. Counsel updated the record with information about a threatening telephone call to a residence where the applicant is residing in Mexico. While counsel's statement does not constitute evidence[1], the record supports that the applicant and her family members have direct experience with the current escalation of violence in Mexico.

The AAO observes that the Department of State issued a Travel Warning for Mexico, warning that crime and violence has escalated throughout the country in all cities and that U.S. citizens should take precautions and remain in well-known tourist areas. *United States Department of State Travel Warning: Mexico*, dated September 10, 2010. The applicant and her U.S. citizen son face a risk of crime or violence in Mexico, and it is evident that the applicant's husband would endure psychological hardship due to concern for the safety of the applicant and their son.

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[1] *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The current prevalence of crime and violence in Mexico, combined with the fact that the applicant's family has directly faced a threat of harm, constitutes unusual circumstances not commonly face when individuals reside abroad due to inadmissibility.

The record supports that the applicant's husband will face other elements of hardship should he reside apart from the applicant and their son, including the risk of harm to himself upon traveling to Mexico to visit the applicant and their son, the difficulty of acting as a single parent should he attempt to care for his son by himself in United States, and the emotional difficulty resulting from the separation itself.

Based on the foregoing, the applicant has shown that her husband will endure extreme hardship should she reside in Mexico and he remain in the United States.

The applicant has shown that her husband will experience extreme hardship should he relocate to Mexico. As discussed above, the record and reports support that the applicant's husband would face a risk of harm in Mexico due to escalating crime and violence there. It is evident that this threat would cause significant emotional difficulty for the applicant's husband.

The applicant's husband asserted that he would face economic hardship should he reside in Mexico, in part due to the lack of employment opportunities and unfeasibility of operating his landscaping business there. The AAO takes notice that economic and employment conditions are less favorable in Mexico than they are in the United States, and that the applicant's husband would likely face financial challenges there. *United States Central Intelligence Agency World Factbook: Mexico*, updated April 21, 2010 (estimating that in 2009 unemployment in Mexico was 5.6 percent, underemployment was as high as 25 percent, and in 2008 more than 47 percent of the population lived under the asset-based poverty line).

The record supports that the applicant's husband would face other challenges should he reside in Mexico, including separation from his numerous family members in the United States, the interference with or loss of his landscaping business in the United States, separation from his country of nationality where he has resided for a lengthy period, and the interference with his ability to provide support for his parents.

All elements of hardship to the applicant's husband, should he relocate to Mexico, have been considered in aggregate. Based on the foregoing, the applicant has shown that her husband will endure extreme hardship should he join her in Mexico for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant has shown that denial of the present waiver application "would result in extreme hardship" to her husband, as required under section 212(a)(9)(B)(v) of the Act.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. All negative factors may be considered when deciding whether or not to grant a

favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra,* at 12.

The negative factors in this case consist of the following:

The applicant entered the United States without inspection and remained for a lengthy duration without a legal immigration status.

The positive factors in this case include:

The record does not reflect that the applicant has been convicted a crime; the applicant's U.S. citizen husband would experience extreme hardship if she is prohibited from residing in the United States; the applicant's U.S. citizen son will experience significant hardship if he resides in the United States without the applicant or resides in Mexico; the applicant has cared for her U.S. citizen son and cultivated a strong family unit, and; the applicant has engaged her community through religious activities.

While the applicant's violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant also bears the burden of persuasion. *See Matter of Mendez-Moralez*, 21 I&N Dec. at 301 (applicant must show that he merits a favorable exercise of discretion). In this case, the applicant has met her burden that she is eligible for a waiver and she merits approval of her application.

ORDER: The appeal is sustained.