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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **OCT 07 2010**

IN RE: [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,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City (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 seeking readmission within ten years of her last departure from the United States. The applicant is the spouse of a U.S. citizen and has two U.S. citizen children. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated February 8, 2008, the district director found that the applicant failed to establish extreme hardship to a qualifying relative as a result of her inadmissibility and that she did not warrant the favorable exercise of discretion. The application was denied accordingly.

In a letter on appeal, dated March 3, 2008, the applicant's spouse questions why hardship to the applicant's children is not relevant. He states that his children have had to endure extreme emotional and medical hardship. He states that he and his children are suffering physically, emotionally, mentally, and physiologically. The applicant's spouse submits additional evidence on appeal.

The record indicates that the applicant entered the United States without inspection in August 2002. The AAO notes that at this time the applicant was married to a U.S. citizen and eligible to apply for an immigrant visa. The applicant remained in the United States until February 2007. Therefore, the applicant accrued unlawful presence from August 2002 until February 2007. In applying for an immigrant visa, the applicant is seeking admission within ten years of her February 2007 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 and/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. Hardship to the applicant's children cannot be directly considered because in writing the Act Congress did not designate U.S. citizen or lawfully resident children as qualifying relatives in the case of applicants who are inadmissible for unlawful presence. Thus, 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-Morales*, 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.

The record of hardship includes three letters from the applicant's spouse, photographs of the applicant's family, a medical document in Spanish, a letter from the applicant's doctor, and a letter from the applicant's friend.

The AAO notes that because the applicant failed to submit a certified translation of the medical document submitted on appeal, 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.

In his statement dated March 3, 2008, the applicant's spouse states that his son has lost a year of education because he was not accepted into a school in Mexico because he is a U.S. citizen. He also states that his two younger children are suffering extreme medical and emotional hardship in Mexico because their gastro-intestinal systems are having problems with the water and food in rural Mexico. He states that they have been to the doctor during the past eleven months for many different reasons. The applicant's spouse states that he and his children are suffering physically, emotionally, mentally, and physiologically and are in a worse state of health than before the applicant left. He states that he has been suffering from extreme hardship at his work because of lack of sleep, lack of concentration, and lack of energy due to his preoccupation with his spouse and children in Mexico. The applicant's spouse states that he tried to keep his children in the United States, but could not meet his work demands and was threatened with being replaced. He states that he cannot use a day care because of his work schedule and he has no family in the United States to help him with his children. He states that his children are suffering from emotional stress, depression, lack of sleep, and they are not eating properly. The applicant's spouse states further that he is very emotional and upset because he does not know for how long his family will be separated. He states that he currently has to maintain two houses, pay for all of the medical care his family receives in Mexico, and the trips that he makes every month or so to see his wife and children.

In a statement dated March 9, 2007 the applicant's spouse states that separation from the applicant would be very difficult for him and his two small children. He states that his children are very attached to the applicant because they are young and they cry all the time. He states that he is scared of the emotional and mental effects being away from their mother might cause his children. He states that his youngest child has not wanted to eat because the applicant has been in Mexico.

In a statement dated February 28, 2007 the applicant's spouse states that he is suffering emotional stress, depression, and anxiousness about the impending departure of the applicant. He also states that he is suffering at work and that his children are suffering because they are very close to their mother.

The letter from the applicant's doctor, dated February 27, 2007, makes reference to the applicant being a prenatal patient. The AAO notes that the record indicates that the applicant gave birth to her child and is no longer in need of prenatal care.

In a letter dated February 27, 2007, the applicant's friend states that the applicant is of good moral character and is always caring for her children. She states that the applicant's U.S. citizen children would suffer without her.

The AAO notes that although the applicant has not submitted country condition documentation for Mexico, the U.S. Department of State has issued a travel warning, dated September 10, 2010 for U.S. citizens traveling or residing in Mexico. This warning specifically recommends that U.S. citizens defer unnecessary travel to [REDACTED] the area of Mexico where the applicant is from. In general, the warning states that since 2006, the Mexican government has been engaging in an extensive effort to combat drug-trafficking organizations (DTOs) and that Mexican DTOs have been engaged in a vicious struggle with each other for control of trafficking routes. The warning states that in order to combat violence, the government of Mexico has deployed military troops throughout the country and that U.S. citizens should expect to encounter military and other law enforcement checkpoints when traveling in Mexico and are urged to cooperate fully. The travel warning states further that in confrontations with the Mexican army and police, DTOs have employed automatic weapons and grenades with some assailants wearing full or partial police or military uniforms, and are also using vehicles that resemble police vehicles. The warning asserts that according to published reports, 22,700 people have been killed in narcotics-related violence in Mexico since 2006 with innocent bystanders having been killed in shootouts between DTOs and Mexican law enforcement.

The warning then states specifically that the state of [REDACTED] is home to one of Mexico's most dangerous DTOs, "La Familia". The warning states that in April 2010, the Secretary for Public Security for [REDACTED] was shot in a DTO ambush, that security incidents have also occurred in and around the State's world famous butterfly sanctuaries, and that in 2008, a grenade attack on a public gathering in [REDACTED], killed eight people. Finally, the warning states that U.S. citizens should exercise extreme caution when traveling in [REDACTED] especially outside major tourist areas.

Thus, the AAO finds that relocation to Mexico would be extreme hardship to the applicant's spouse. In relocating to Mexico, the applicant's spouse likely would be residing in an area of Mexico that is very unstable and potentially violent with two young children. The applicant's spouse has also stated that his one son was not able to enroll in school and that they are suffering medically from life in rural Mexico. The hardship that the applicant's spouse would face raising young children in a potentially violent and dangerous atmosphere rises to the level of extreme hardship.

The AAO also finds that the applicant's spouse will suffer extreme hardship as a result of separation. The applicant's spouse would face great difficulties having his children in the United States without the help of the applicant. So, separating the applicant and her spouse also separates the applicant's spouse from his children. The applicant's spouse has stated in three different statements that he is suffering emotionally from being separated from the applicant and

feels depressed, anxious, and stressed. Moreover, given the current country conditions in the area of Mexico where the applicant is from, the applicant's spouse is risking his safety in traveling to see his wife and children. The emotional suffering experienced by the applicant surpasses the hardship typically encountered in instances of separation because of the applicant's spouse's inability to relocate to Mexico, his two young children having to reside in Mexico if the applicant is not allowed entry into the United States, and that the family is facing separation for a period of seven years. The AAO has carefully considered the facts of this particular case and finds that the hardship suffered by the applicant's spouse rises to the level of extreme hardship. The AAO therefore concludes that the applicant has established that his spouse would suffer extreme hardship if his waiver of inadmissibility is denied.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 are the applicant's immigration violations. The favorable factors in the present case are extreme hardship to the applicant's U.S. citizen spouse and children if she were to be denied a waiver of inadmissibility; the applicant's lack of a criminal record or offense; and, as indicated by statements from family and friends, the applicant's good moral character and attributes as a good mother and wife.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that 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.

**ORDER:** The appeal is sustained.