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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H6

DATE: JUL 11 2011 Office: CIUDAD JUAREZ 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, 8 U.S.C. § 1182(a)(9)(B)(v), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) were concurrently denied by the Field Office Director, Ciudad Juarez, Mexico and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the applications will be approved.

The record reflects that the applicant, a native and citizen of Mexico, entered the United States without inspection in March 1988. On October 15, 1997, the applicant was ordered removed. *Order of the Immigration Judge,* dated October 15, 1997. A Warrant of Removal/Deportation was issued on October 15, 1997. *Warrant of Removal/Deportation,* dated October 15, 1997. The applicant did not depart the United States until April 2006 pursuant to the outstanding warrant. As such, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions of the Immigration and Nationality Act (the Act), until April 2006, when he departed the United States. The applicant was thus found to be inadmissible to the United States pursuant to sections 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 more than one year and 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien previously removed. The applicant is married to a U.S. citizen. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). In addition, the applicant seeks permission to reapply for admission into the United States within 10 years of his departure under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii). *See Warning to Alien Ordered Removed or Deported,* dated April 10, 2006.

The field office director determined that the applicant had failed to establish extreme hardship to a qualifying relative. The field office director also found that the applicant did not merit favorable discretion after weighing the favorable and unfavorable factors in the case. The applicant's Form I-601 and Form I-212 were concurrently denied. *Decision of the Field Office Director,* dated January 21, 2009.

On appeal, counsel for the applicant asserts that the applicant's spouse would suffer extreme hardship should the waiver application be denied. *Form I-290B, Notice of Appeal or Motion; Attorney's brief.* In support of these assertions, counsel submits two briefs. The record also includes, but is not limited to: statements from the applicant's spouse; a medical letter and records for the applicant's spouse; statements from the children's guidance counselors; statements from family members, friends, and co-workers; loan statements; a property deed; bank statements; psychological reports; a medical letter for the applicant's children; an employment letter for the applicant's spouse; and published country conditions reports. 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:

(A) Certain alien previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under

section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

(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 [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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.

The applicant's spouse's family members reside in the United States. She does not have any family members in Mexico. *Attorney's brief.* Counsel notes she has resided in the United States for 20 years. *Id.* The applicant's spouse contends that her three children do not speak Spanish and it would be difficult for them to communicate or adjust to Mexico. *Statement from the applicant's spouse*, dated February 17, 2009. She states that these difficulties would ultimately impact her and the applicant as they would have to increase their efforts to help them succeed. *Id.* The applicant's spouse contends that the environment in Mexico is terrible and dangerous. She explains that there is no potable water, no heat, no air-conditioning and many power outages. Moreover, the applicant's spouse details that during one trip to Mexico to visit her husband, the family was awakened by a robbery. The victim refused to give up his money so the robbers shot him, took his money and drove away. As the applicant's spouse emphasizes, the incident occurred outside their window. *Statement from the applicant's spouse*, dated February 17, 2009. The AAO notes that a Travel Warning was issued for Mexico, advising U.S. citizens about the problematic security situation in Mexico. *Travel Warning, Mexico, U.S. Department of State*, dated April 22, 2011.

Based on a totality of the circumstances, particularly the applicant's spouse's lack of family ties to Mexico, the presence of her parents, siblings, cousins, uncles and aunts in the United States, community ties, the length of time she has resided in the United States, property ownership in the United States, the documented country conditions of Mexico as evidenced by the Travel Warning issued by the United States Department of State, the applicant's spouse's own experience witnessing a robbery and shooting outside her window while visiting the applicant in Mexico, and the impact a relocation would have upon the applicant's spouse in raising three children who do not speak the

language, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Mexico.

The applicant's spouse contends that she would experience financial and emotional hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. The applicant's spouse notes that she has borrowed money in an attempt to make ends meet with regards to paying the bills and supporting her family while her husband resides abroad. *Statement from the applicant's spouse*, dated February 17, 2009. The record includes loan statements as well as a statement from her father noting that she borrowed money from him that has yet to be repaid. *Loan statements; statement from the father of the applicant's spouse*, dated September 24, 2007. Additional statements from family members note that they have obligations and limitations of their own and are unable to provide the applicant's spouse with financial support. *Statements from family members*.

The applicant's spouse further explains that her world is being destroyed as each day passes. *Statement from the applicant's spouse*, dated February 17, 2009. Statements from licensed healthcare professionals note that the applicant's spouse has been diagnosed with Generalized Anxiety Disorder, Major Depressive Disorder, and Post Traumatic Stress Disorder due to the removal of the applicant from the United States. *Statement from* dated September 24, 2007; *Psychological evaluation from* , dated September 4, 2007; *and Psychological evaluation from* , dated July 25, 2006. The applicant's spouse has been prescribed medication for anxiety and depression. *Statement from* dated September 14, 2007. The applicant's spouse's sister, , confirms that her sister and children are in therapy in order to cope with the applicant's inadmissibility and further details that her sister had to be taken to the emergency room in August 2007 because she suffered a nervous breakdown. *Affidavit from* dated September 7, 2007. The applicant's spouse's neighbors further detail the hardships the applicant's spouse is experiencing due to her husband's absence. They note that they help her with the care of the children and the maintenance of the home. *Letter from* dated September 14, 2007.

When looking at the aforementioned factors, particularly the documented psychological health conditions of the applicant's spouse, her documented financial difficulties and the difficulties the applicant's spouse is experiencing as a single caregiver and provider to her children, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to remain in the United States.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by

regulations prescribe. 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 . . . 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, "[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 favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to remain in Mexico, regardless of whether they accompanied the applicant or remained in the United States, community ties, home ownership and gainful employment in the United States. The unfavorable factors in this matter are the applicant's unauthorized entry to the United States, periods of unlawful presence and unauthorized employment in the United States and the applicant's removal.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

As referenced above, the field office director denied the applicant's Form I-212 concurrently with the Form I-601. As the AAO has now found the applicant eligible for a waiver of inadmissibility, it will withdraw the field office director's decision on the Form I-212 and render a new decision.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility and permission to reapply for admission, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the applications approved.

ORDER: The appeal is sustained. The applications are approved.