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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

PUBLIC COPY

[redacted]

H6

Date: JUL 11 2011 Office: MEXICO CITY (CIUDAD JUAREZ) FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 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. The applicant is the daughter of a U.S. citizen father and a lawful permanent resident mother and 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), in order to reside with her parents and siblings in the United States.

The acting district director found that the applicant failed to establish extreme hardship to a qualifying relative and that the favorable factors do not outweigh the unfavorable factors in the case. The acting district director denied the waiver application accordingly. *Decision of the Acting District Director*, dated August 19, 2008.

On appeal, counsel contends the applicant established the requisite hardship, particularly considering the applicant has been abducted and tortured in Mexico, causing severe emotional stress and trauma to her parents. In addition, counsel contends the favorable factors outweigh the negative factors of the case since the applicant entered the United States when she was only one year old and her entire family, including her parents, three siblings, grandparents, uncles, and aunt all reside in the United States as lawful permanent residents or U.S. citizens.

The record contains, *inter alia*: a letter from the applicant's mother, [redacted] a letter from the applicant's father, [redacted] copies of the birth certificates of the applicant's three U.S. citizen sisters; a letter from the applicant's landlord in Mexico; copies of money orders the applicant's parents have sent the applicant in Mexico; a copy of a public security report; a letter from [redacted] physician; a letter from the school the applicant attended in the United States; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

> Any alien (other than an alien lawfully admitted for permanent residence) who -
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> . . . .
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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.
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> . . . .

> (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.

In this case, the record shows, and the applicant does not contest, that she entered the United States without inspection in May 1989 when she was one year old, and remained until her departure in February 2007. The applicant accrued unlawful presence from November 30, 2005, when she turned eighteen years old, until her departure from the United States in February 2007. Therefore, the applicant accrued unlawful presence of over one year. She now seeks admission within ten years of her February 2007 departure. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for a period of more than one year.

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.

In this case, the applicant's mother, [redacted] states that this situation of having her daughter in Mexico by herself is "driving [her] crazy thinking that [her daughter] might be kidnap[p]ed again, with all the threats that were made against her." According to [redacted], her daughter is in hiding so that nobody knows where she is and she cannot go outside of the house. [redacted] states she feels helpless to save her daughter, feels severely depressed, and has difficulty functioning. In addition to her own depression, [redacted] contends her other daughters are all depressed over their sister's absence. She further contends her husband is very ill and is having difficulty continuing to work. [redacted] explains that she brought her daughter to the United States when she was one and a half years old so that she could have a better way of life. [redacted] contends she has never been apart from her daughter. She states her daughter does not read or write Spanish, only speaks some Spanish, and began and finished all of her schooling in the United States. *Declaration of Fatima Pulido*, dated October 14, 2008.

The applicant's father, [redacted], states that he is mortified at what has happened to his daughter. He states that he went everywhere with his daughter and that she is his "right hand." He states that whenever he got sick, his daughter took care of him and that she also took care of her sisters. [redacted] contends he is depressed and very stressed and that one of the veins in his left eye has burst

because of all the stress. He fears she might get kidnapped and that he will be unable to do anything. [redacted] dated October 14, 2008.[1]

A letter from [redacted]s physician states that [redacted] was initially seen in May 2008 due to decreased visual acuity in the left eye, fuzzy vision on the top portion of his visual field, and soreness in his eye. The letter states that [redacted] underwent Fluorescein Angiogram on May 30, 2008, that shows "Branch Retinal Vein Occlusion of the left eye, clinical significant macular edema, and posterior hemorrhages with soft exudates." The letter further states that [redacted] was seen again in August with a further decrease in his vision. The physician recommends Laser Photocoagulation due to persistent hemorrhages and cystoid macular edema. [redacted] October 8, 2008.

A copy of a public security report states that on August 15, 2008, a telephone call was received stating that a red station wagon with various individuals in it passed by and the scream of a woman was heard begging for help. The report states that the area was cordoned off for three hours and a search was done by foot. According to the report, the applicant was found. She claimed she was walking when a station wagon blocked her way and four men came out of it, two of whom were carrying weapons. She was reportedly forced into the station wagon, told she was going to be raped and that they were going to ask for a big ransom, and then tortured. The applicant stated that her captors suddenly stated that "everything went wrong" and told her to leave before they changed their minds. She states she ran until she saw the squad car. *Letter from* [redacted] dated August 16, 2008.

After a careful review of the evidence, the AAO finds that the applicant has established that her U.S. citizen father has suffered, and will continue to suffer, extreme hardship as a result of the applicant's waiver being denied. The record shows that the applicant's father, [redacted], is currently fifty years old and has lived in the United States for decades, since at least 1983 when he became a naturalized U.S. citizen. Documentation in the record indicates [redacted] has been experiencing a decrease in vision, soreness in his eye, as well as edema and hemorrhages in his eye. According to [redacted], the applicant took care of him whenever he was sick. In addition, the record shows that in August 2008, the applicant was kidnapped and purportedly tortured in Mexico. The AAO takes administrative notice that the U.S. Department of State warns U.S. citizens that crime and violence are serious problems and can occur anywhere in Mexico. Significantly, the Travel Warning explicitly warns individuals to exercise extreme caution when traveling in the state of Guerrero, where the applicant is currently living, due to the strong presence of transnational criminal organizations (TCOs). *U.S. Department of State, Travel Warning, Mexico*, dated April 22, 2011; *see also Letter from Gladis Gutierrez*, dated October 14, 2008

[1] The record contains another letter from [redacted] dated February 15, 2007. However, this letter is written in Spanish and has not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Consequently, this letter cannot be considered.

(indicating the applicant rents her house in Petatlan, Guerrero). Although hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative, in this case, considering the unique circumstances of the applicant's kidnapping, the AAO finds that if [redacted] were to remain in the United States without the applicant, he would experience extreme emotional harm due to his concern about the applicant's well-being and safety in Mexico, a concern that is beyond the common results of removal or inadmissibility.

Moreover, moving back to Mexico to avoid separation would be an extreme hardship for [redacted] Relocating to Mexico would disrupt the continuity of his medical care and he would need to readjust to a life in Mexico after having lived in the United States for approximately thirty years. Additionally, as described above, the U.S. Department of State has issued a Travel Warning for parts of Mexico, including the state of Guerrero, where the applicant is currently living. Considering all of these unique factors cumulatively and considering the totality of the circumstances in this case, the AAO finds that denying the applicant admission to the United States would result in extreme hardship to her U.S. citizen father, taking this case beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's unlawful presence in the United States. The favorable and mitigating factors in the present case include: the applicant's significant family ties in the United States including her parents, siblings, and extended family, all of whom are lawful permanent residents or U.S. citizens; the extreme hardship to the applicant's parents and siblings if she were refused admission; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when 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.