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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

[redacted]

H6

DATE: JUN 30 2011 Office: MEXICO CITY, MEXICO FILE: [redacted]

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:

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, 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 his last departure from the United States. The applicant's spouse, two children and stepchild are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, dated February 12, 2009.

On appeal, the applicant's spouse states that new evidence of extreme hardship exists in the applicant's case. *Form I-290B*, received March 17, 2009.

The record includes, but is not limited to, an I-601 brief, the applicant's spouse's statement, education-related documents, a statement from the father of the applicant's stepchild, statements from family friends, statements from teachers and state benefits documents.[1] The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in March 2000 and departed the United States in December 2004. The applicant accrued unlawful presence during this entire period of time. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his December 2004 departure from the United States.

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-
> >
> > . . . .

[1] The record includes a brief filed with the Form I-601 from [redacted] and a June 5, 2009 letter from the applicant's spouse on [redacted] letterhead. On June 1, 2011, the AAO requested that [redacted] submit a Form G-28, Notice of Appearance as Attorney or Representative. As a Form G-28 has not been received, the AAO will consider the applicant to be self-represented.

> (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 children can be considered only insofar as it results in hardship to a qualifying relative. 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,* 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 record reflects that the applicant's spouse was born in Puerto Rico. The I-601 brief states that the applicant's spouse has spent her entire life in the United States; she would have a tough time adjusting to Mexico; it may be difficult for her to obtain employment in Mexico; and her ex-spouse would require her to financially support their child which would be impossible. *I-601 Brief*, dated November 8, 2007. The record does not include supporting documentary evidence of the employment and economic situation in Mexico, or that the applicant's spouse would be required to provide financial support from abroad. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's spouse states that she has joint custody of her oldest child with her ex-spouse; her ex-spouse will not permit her to remove their son out of the United States; she cannot move to Mexico without her son; her children are attending school and are successful in their studies; and her family lives in North Carolina and Puerto Rico. *Applicant's Spouse's Second Statement*, dated

March 3, 2009. The father of the applicant's stepchild states that he would absolutely not permit the removal of his son from the United States; he has joint custody of the child; his son has access to him at any time; and he will pursue any legal avenues to keep their son in the United States. *Letter from Applicant's Stepchild's Father*, dated March 3, 2009.

The applicant spouse states that she will not be able to raise her children in a place "where education and living conditions are not visible"; and they will not be able to get the same education as children born in the United States. *Applicant's Spouse's First Statement*, dated November 6, 2007. The AAO notes the issues in raising young children in a different country.

The applicant's spouse states that she is the single parent of three small children; her youngest child has not met her father (the applicant); she has been physically separated from the applicant since his departure in 2004; their daughter misses the applicant tremendously and it is unbearable to see her cry; she is juggling three children with no support; her children's school system is concerned about their tardiness; there are no funds to place her children in daycare or afterschool programs; and she has to find jobs to accommodate their school times. *Applicant's Spouse's Second Statement.* The record includes documentation reflecting that the applicant's spouse's two older children are having serious school attendance issues.

A friend of the applicant states that the applicant is a wonderful father; his children miss him terribly; and the youngest child has never met him. *Letter from* [redacted] undated. Another friend states that the applicant is a dedicated family man, and a wonderful father who puts his children before himself. *Letter from* [redacted] undated. A preschool teacher details the difficulty that the applicant's spouse's son is experiencing without the applicant. *Letter from Preschool Teacher*, undated. A teacher and family manager of the applicant's spouse's older daughter state that they have noticed several negative changes in her behavior since the applicant has been in Mexico and that it is imperative for her development that the applicant returns to the United States. *Letter from* [redacted] *and* [redacted] dated October 22, 2007.

The applicant's spouse states that her children receive Medicare and food stamps to help make ends meet and the applicant has been promised employment upon returning to the United States. *Applicant's Spouse's Second Statement.* A friend of the applicant states that the applicant's spouse struggles with finances, cannot always provide what is needed, does not wish to rely on the government as much; the applicant had a stable job and income while in the United States; and the applicant's spouse cannot continue her education due to lack of time, support and money. *Letter from Applicant's Friend.* The I-601 brief states that the applicant's spouse is responsible for food, car notes, utilities, medical expense and child-related expenses. The record includes a few bills in the applicant's name. The record includes documentation reflecting that the applicant's spouse was recertified to receive $474 from the North Carolina Food and Nutrition Service. The record includes documentation reflecting that the applicant's spouse and youngest child are enrolled in the North Carolina Medicaid program.

Considering the unique issues presented, which include the applicant's spouse's lack of ties to Mexico, the inability to take her oldest child with her to Mexico, the issues in raising young children in a different country, the financial and emotional issues, the difficulty in raising three young children alone, the educational issues that the applicant's children are experiencing, and the role of the applicant in assisting his family, the AAO finds that the applicant's spouse would experience extreme hardship upon relocating to Mexico or remaining in the United States without the applicant.

The AAO additionally 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(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-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 main adverse factors in the present case are the applicant's unlawful presence, a careless and reckless driving conviction on November 6, 2002, an impaired driving conviction from November 21, 2001 and unauthorized employment.

The favorable factors include the presence of the applicant's U.S. citizen spouse and children, extreme hardship to his spouse, and letters attesting to his good moral character.

The AAO finds that the 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.