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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: NOV 18 2011 Office: MEXICO CITY 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:

[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 waiver application was denied by the Field Office Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

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 again seeking admission within ten years of his last departure from the United States. The applicant is the spouse of a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated July 30, 2010, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated July 30, 2010. Thereafter, the applicant filed another waiver application in San Diego California, which was denied on August 24, 2011. *See Decision of the Field Office Director* dated August 24, 2011.

On appeal of the July 30, 2010 waiver decision, the applicant's attorney contends that the qualifying spouse is suffering emotional, psychological and financial hardships due to her separation from the applicant. Further, the applicant's attorney stated that the qualifying spouse immigrated to the United States when she was a child and has close family ties to the United States. Further, the applicant's attorney asserts that the qualifying spouse would lose her employment and all her benefits if she relocated to Mexico, and that she requires her medical benefits for her and her son's medical issues.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), briefs from the applicant's attorney, a letter from the qualifying spouse, documentation regarding the applicant's criminal record, the qualifying spouse's naturalization certificate, psychological evaluations, letters from the qualifying spouse's and applicant's employers, medical documentation regarding the qualifying spouse and her family members, letters from the qualifying spouse's doctors, medical information from the internet, articles regarding fatherless children, letters from friends and family, the qualifying spouse's educational and occupational certificates, financial documentation, an approved Petition for Alien Relative (Form I-130), country condition documentation, documentation relating to the qualifying spouse's father's death, a marriage certificate, and birth certificates and school records for their children.

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.

The Field Office Director found that the applicant was not inadmissible under Section 212(a)(2)(A)(i)(I) of the Act for his driving under the influence or receipt of stolen property convictions because his was not sentenced to more than six months imprisonment. *See Decision of the Field Office Director* dated July 30, 2010. The AAO notes that an alien who has committed more than one petty offense is not ineligible for the "petty offense" exception under section 212(a)(2)(A)(ii) of the Act if "only one crime" is a crime involving moral turpitude. *See Matter of Garcia-Hernandez,* 23 I&N Dec. 590 (BIA 2003). The decision of the Field Office Director does not address whether the applicant's conviction for driving under the influence is a crime involving moral turpitude or whether the maximum possible penalty for his receiving stolen property offense exceeded one year imprisonment, which would render him ineligible for the exception under section 212(a)(2)(A)(ii) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not review the determination of whether the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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. The applicant's wife 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 qualifying relative in this case is his wife, who is a United States citizen. The record indicates that the applicant entered the United States in 1999 without inspection and remained until June 2009, when he voluntarily departed. The applicant accrued unlawful presence from June 3, 2000, when he turned 18 years old, until June 2009 when he voluntarily departed, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. The applicant has not disputed his inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

The record contains Form I-601, Form I-290B, briefs from the applicant's attorney, a letter from the qualifying spouse, psychological evaluations, letters from the qualifying spouse's and applicant's employers, medical documentation regarding the qualifying spouse, her parents and children, letters from the qualifying spouse's doctors, medical information from the internet, articles regarding fatherless children, letters from friends and family, the qualifying spouse's educational and occupational certificates, financial documentation, country condition documentation and birth certificates and school records for their children.

As previously stated, the applicant's attorney contends that the qualifying spouse is suffering emotional, psychological and financial hardships due to her separation from the applicant. Further, the applicant's attorney stated that the qualifying spouse immigrated to the United States when she was a child and has close family ties to the United States. Further, the applicant's attorney asserts that the qualifying spouse would lose her employment and all her benefits if she relocated to Mexico, and that she requires her medical benefits for her and her son's medical issues.

The applicant's attorney asserts that the qualifying spouse is suffering emotional and psychological hardships as a result of her separation from the applicant. The record contains psychological evaluations, notes from the qualifying spouse's psychological treatments, proof of prescribed medications for her psychological issues, and letters from the qualifying relative's friends and family members. The record demonstrates that the qualifying spouse is in treatment and has been prescribed medications for her depression and panic attacks. The psychological evaluation also diagnosed her with Major Depressive Disorder and extreme anxiety. Further, the psychologist states that the qualifying spouse is a "completely dejected, depressed, hopeless and helpless young woman" and that she is "likely to become psychologically impaired or disabled." The qualifying spouse, in her letter, also discusses at detail the medical hardships that her son is facing. The record contains documentation regarding her child's medical issues, including letters from his doctors and medical records. The psychological evaluations indicate that the qualifying spouse is having problems coping with her son's medical issues and that she has been worrying about her son's ability to find proper medical care in Mexico. The record demonstrates that her son has undergone surgeries on his eye for a chronic condition and on his shoulder, and that his medical issues may present future problems for him. Based on the evidence on the record, the qualifying spouse is

suffering emotional and psychological hardships caring for her son without the support from the applicant.

With regard to the qualifying spouse's financial hardship, the applicant's attorney contends that the qualifying spouse is struggling without assistance from the applicant. The record contains letters from the qualifying spouse's employer and the applicant's past employer. The record also contains proof of the qualifying spouse's income and expenses. Letters from friends and family were also provided. The evidence indicates that the qualifying spouse is struggling to provide for her family without the financial help from her husband. As such, when considered in the aggregate, the documentation provided regarding the qualifying spouse's financial, emotional and psychological hardships demonstrate that she will suffer extreme hardship if she were to remain in the United States without the applicant.

The applicant has also demonstrated that his qualifying spouse would suffer extreme hardship in the event that she relocated to Mexico with the applicant. The qualifying spouse came to the United States when she was 7 years old and has lived here for over 20 years. The applicant's attorney also indicates that the applicant's entire immediate family, including her two children, her parents, and siblings, and some extended family members, live in the United States. The record contains birth certificates for her children and letters from family members confirming her ties to the United States. The psychological evaluation also indicates that the qualifying spouse and her children live with her parents. Further, the applicant's attorney indicates that the qualifying spouse and her son have medical issues for which she relies upon the healthcare benefits from her job. The record contains proof that the qualifying spouse suffers from chronic medical illnesses requiring medications, and that she is also in treatment for her psychological issues for which she also takes medication. In addition, there is medical documentation regarding her son to demonstrate that he has undergone medical procedures and may require medical assistance in the future. It is clear that the qualifying spouse relies upon her healthcare insurance provided by her current position. The record contains a letter from her employer and a pay stub confirming her healthcare benefits. In addition, the qualifying spouse in her letter raises her concerns regarding the country conditions in Mexico, the availability of healthcare and employment. The record contains country condition materials regarding Mexico. The qualifying spouse also notes that she would lose her current position and career if she relocated to Mexico. The record contains educational certificates and letters from coworkers and a letter from her employer, who indicates that he has invested in her training. The AAO concludes that, were the applicant's spouse to relocate to Mexico with the applicant, she would suffer extreme hardship due to her length of residence in the United States, her close ties to the United States, her potential medical and financial hardships and a loss of career.

Considered in the aggregate, the applicant has established that his wife would face extreme hardship if the applicant's waiver request is denied. Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to

determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, and the applicant's support from the qualifying spouse, family and friends. The unfavorable factors in this matter are the applicant's accrual of unlawful presence in the United States and his prior criminal offenses.

Although the applicant's violations of the immigration and criminal laws cannot be condoned, the positive factors in this case outweigh the negative factors. The AAO therefore finds that a favorable exercise of discretion is warranted. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.