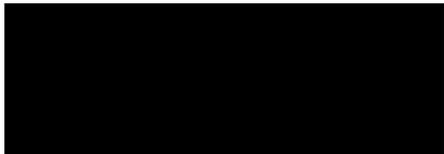


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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

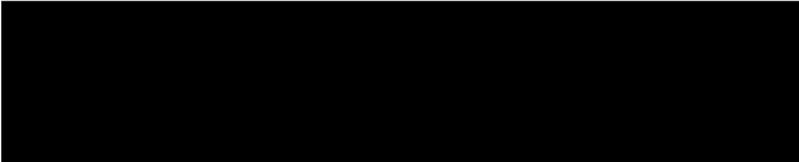


H6

DATE: **OCT 03 2011** Office: MEXICO CITY, MEXICO FILE:   
(CIUDAD JUAREZ)

IN RE: Applicant: 

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:  


**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 her last departure from the United States. The applicant's spouse is a U.S. citizen and she 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 May 8, 2009.

On appeal, counsel asserts that the decision was an abuse of discretion and contrary to law. *Form I-290B*, dated June 4, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, a psychological evaluation for the applicant's spouse, financial records, documents in Spanish and letters of support.<sup>1</sup> The entire record was reviewed and considered, except for the Spanish-language documents, in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in August 2001 and departed in October 2007. 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 her October 2007 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-

....

(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

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<sup>1</sup> The AAO notes the documents in Spanish, but they will not be considered as they do not include translations, as required by the regulation at 8 C.F.R. § 103.2(b)(3).

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 section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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.

Counsel states the applicant’s spouse has numerous family ties in the United States, including his father, mother, three brothers, two sisters, two nieces and one nephew; the applicant lives in a small town where there are no jobs; the applicant’s spouse has never held a job in Mexico; and he could not leave the United States as he could not sell his and the applicant’s house due to the poor real estate market. *Brief in Support of Appeal*, undated. The record includes documentation reflecting that the applicant’s spouse has several U.S. citizen and lawful permanent resident family members in the United States. The applicant states that her spouse could not stay in Mexico as he needs to work to pay for their home; they could lose their home if her spouse gets behind on the mortgage; her level of education makes it hard to find adequate employment in Mexico; and there are not any decent paying jobs in Mexico. *Applicant’s Statement*, dated October 22, 2007. The record includes mortgage statements for the applicant’s spouse. The record reflects that the applicant’s spouse has been employed with the same company since October 14, 1999. *Employer Letter*, dated May 20, 2009. The record includes copies of money transfer receipts from the applicant’s spouse to the applicant.

The record reflects that the applicant’s spouse has been in the United States since 1998; he has significant family ties in the United States; he has been with the same employer since 1999 (as of May 2009); and he has significant financial obligations in the United States, such as his mortgage. The record also shows that the applicant’s spouse has been sending money to the applicant in

Mexico, which supports the assertion that they would be unemployed if he relocates to Mexico. Based on these factors, and the normal results of relocation, the AAO finds that the applicant's spouse would suffer extreme hardship upon relocating to Mexico.

Counsel states that the applicant and her spouse do not have children as they realize the importance of resolving the applicant's immigration status; they desire to have a stable setting for raising their family and understand the importance of both parents being present; the applicant would be 41 years old before she could have children and this would put her future pregnancy at risk; the applicant's spouse would not be able to return to school as he would be working and performing the household tasks; the applicant's spouse is struggling financially; he sends the applicant money if any remains after paying the bills; and the applicant's spouse's inability to provide for the applicant has added to his depression. *Brief in Support of Appeal.*

The applicant's spouse states that he and the applicant were a united and happy couple; he started having economic problems upon separation; he has numerous bills and feels bad that he can't send the applicant money in some months; the applicant lives in a small town with no jobs; his company cut off overtime work, sometime he does not get 40 hours of work and his income has decreased considerably; he stopped going to GED classes due to gas expenses; he cannot afford health insurance; he does not go out unless necessary; his savings are gone; he has cancelled insurance on one of his vehicles; he stopped his weekly church donation; he does not use his heating and air conditioning units to save on electricity; and he is worried about the applicant's health as she is getting sick very often. *Applicant's Spouse's Statement*, dated May 25, 2009.

The applicant's spouse's psychological evaluation reflects that he has trouble falling asleep and staying asleep; he feels helpless; he describes his life as miserable; he finds it hard to maintain his 6 day work week; his physical and emotional symptoms meet the diagnostic criteria for Major Depression; his depression started after the applicant's departure; and her return would significantly improve his condition. *Psychological Evaluation*, dated November 21, 2007. The applicant states that she does not want her spouse to become a part-time father; she wants him to be part of the pregnancy process; and her income provides money for groceries and everyday necessities. *Applicant's Statement*, dated October 22, 2007. The record includes numerous, detailed statements from family and friends detailing the emotional and financial difficulty that the applicant's spouse is experiencing.

As mentioned, the record includes copies of money transfer receipts from the applicant's spouse to the applicant. It also includes bank statements; mortgage statements; a credit card statement; church letters reflecting a decrease in yearly donations; a letter reflecting that the applicant's spouse makes \$13.44 per hour; various other bills; a 2008 tax return reflecting income of \$28,824; a 2007 tax return reflecting income of \$47,606; a 2007 W-2 for the applicant reflecting income of \$12,095; and a 2007 W-2 reflecting income for the applicant's spouse of \$35,511. Taken together, these documents show that the applicant's spouse has significant financial obligations, that his household income has decreased significantly since the applicant's departure and his expenses have increased as he has been sending money to the applicant in Mexico.

The record includes documentation verifying that the applicant's spouse is experiencing significant financial and emotional hardship without the applicant. In addition, it would be difficult for them to have a child. The record includes sufficient to establish that the applicant's spouse would suffer extreme hardship if he remained in the United States.

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 adverse factors in the present case include the applicant's unlawful presence, unauthorized employment and entry without inspection.

The favorable factors include the presence of the applicant's U.S. citizen spouse, extreme hardship to her spouse and the lack of a criminal record.

The AAO finds that the violations committed by the applicant 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act and section 212(i) of the Act, the burden of proving eligibility remains entirely with the

applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained. The waiver application is approved.