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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: **OCT 25 2011**

Office: 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Ciudad Juarez. 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 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 married to a U.S. citizen 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 his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated January 20, 2009.

On appeal, counsel contends the field office director failed to properly analyze the social and humane factors of the case. Specifically, counsel claims the applicant's wife's needs her husband's support because she has a child who has attempted suicide and has mental illness, and another child who is in rehab after the death of his own son. In addition, counsel contends the field office director failed to adequately consider country conditions in Mexico.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on October 22, 2002; an affidavit from the applicant; a letter and an affidavit from [REDACTED] a copy of the birth certificate of the couple's U.S. citizen son; letters from [REDACTED] physicians and copies of her medical records; a letter from [REDACTED] daughter from a previous relationship; letters from the applicant's and [REDACTED] employer; numerous letters of support; a copy of the death certificate of [REDACTED] grandson; a letter from a rehabilitation program regarding [REDACTED] son from a previous relationship, [REDACTED] a letter from [REDACTED] son from a previous relationship, [REDACTED] documentation addressing [REDACTED] suicide attempts and mental illness; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Mexico and other background material; 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:

(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.

In this case, the record shows, and the applicant concedes, that he entered the United States without inspection in 2000 and remained until October 2007. *Affidavit of* [REDACTED], dated October 4, 2007. The applicant accrued unlawful presence of seven years. He now seeks admission within ten years of his October 2007 departure from the United States. Accordingly, he 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 one year or more and seeking admission to the United States within ten years of his last departure.

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 wife, [REDACTED] states that she and the applicant live with their four-year old son as well as her three children from a previous relationship. According to [REDACTED] she and the applicant work as a team and share all family responsibilities. [REDACTED] states that her husband earns 50% of their household income and claims that the interruption of his work will be financially devastating for their family. In addition, [REDACTED] contends she suffered from two injuries in 2003 and had to have surgery in 2004. She states she had carpal tunnel on her left wrist and a meniscus tear in her right knee and that these injuries prevent her from doing double shifts as a server without chronic pain. She further states that she has developed Morton’s Neuroma and that her knee aches and the ball of her foot is extremely painful. Furthermore, [REDACTED] states that her son, [REDACTED] who is twenty-seven years old, recently lost his baby boy in a tragic accident and then turned to drugs. Moreover, [REDACTED] states that her son, [REDACTED] who is nineteen years old, suffers from bipolar disorder and ADHD, requiring psychiatric care. [REDACTED] states that since her husband departed the United States, their four-year old son, [REDACTED] is cranky all the time, has reverted to carrying his blanket around, and has been wetting the bed. She states that if she moved to Mexico to be with her husband, her three children from a previous relationship would not move with her and she cannot bear the thought of being separated from them, particularly considering [REDACTED] mental illness and [REDACTED] drug problem. In addition, she states that

neither she nor the couple's son speak Spanish, and she fears being unable to find employment in Mexico. She also contends the educational system and healthcare system in Mexico are not as well developed as they are in the United States and that she fears the high crime rate. *Letter from* [REDACTED] [REDACTED] dated November 18, 2007; *Affidavit of* [REDACTED] dated October 2, 2007.

A letter from [REDACTED] states that he suffers from bipolar disorder and ADHD. He states that his step-father, the applicant, took care of his younger brother and sister and all of the household duties while his mother stayed in the hospital with him after his two suicide attempts. [REDACTED] also states that his step-father helped get his older brother into rehab when his brother turned to drugs after his three-year old son died. *Letter from* [REDACTED] dated September 17, 2007.

Copies of [REDACTED] medical records show that he has made two serious suicide attempts when he was fifteen and eighteen years old. The records state that [REDACTED] has a history of bipolar disorder, attention deficit-hyperactivity disorder, substance abuse, and oppositional defiant disorder. [REDACTED] reportedly "destroys the walls and throws things in the house," and when [REDACTED] discusses this matter with him, he gets more violent. The record also shows that between at least June 2004 and March 2007, [REDACTED] was being treated for antisocial behavior, ADHD, and bipolar disorder by a [REDACTED]. An article in the record states that [REDACTED] was indicted for giving out prescription medications in exchange for sex with his patients.

A copy of [REDACTED] application for Social Security benefits states that he was sentenced to a correctional facility for a year due to his problems with aggression, anger, and domestic violence. [REDACTED] states that he cannot maintain employment, cannot stay focused or on task, and experiences severe mood swings, mental health breakdowns, and outbursts. He states he has a severe lack of motivation due to his depression and has a problem staying compliant with his medications. A copy of [REDACTED] Individualized Mental Health/Substance Abuse Treatment Plan from a juvenile correctional facility states that he has severe bipolar disorder, ADHD, and Conduct Disorder.

A letter from a residential drug rehabilitation program states that [REDACTED] oldest son, [REDACTED] was committed to the program for six months where he would have breathalyzer tests daily and receive random drug tests. *Letter from* [REDACTED] dated November 3, 2008. The record shows that [REDACTED] was assessed for his addictions, diagnosed with deep vein thrombosis (a pooling of blood) in his right arm, and prescribed six medications.

A letter from [REDACTED] physician states that she injured her low back and has a disc problem after injuring herself while lifting heavy furniture. According to the physician, [REDACTED] occupation as a waitress and lack of assistance from her spouse predisposes her to re-injury. *Letter from* [REDACTED] [REDACTED] dated July 20, 2009. Another letter from a different physician and copies of two Surgeon's Operative Reports state that [REDACTED] had surgery for carpal tunnel on her left wrist, and another surgery on her right knee due to a meniscus tear. *Letter from* [REDACTED] dated October 31, 2007. A letter from a third physician states that [REDACTED] had a lesion on her left shin that was biopsied and showed melanoma. The physician states that the lesion was completely removed and that there is no evidence of a recurrence. *Letter from* [REDACTED] dated October 31, 2007; see

also Letter from The Underwriting Department, dated October 30, 2007 (letter from an insurance company denying application for coverage due to her "history of internal cancer in [her] left inner calf"). Furthermore, copies of medical records indicate she was diagnosed with and that she has pain that is aching and sharp on the ball of her foot.

Upon a complete review of the record, the AAO finds that the applicant's wife, will suffer extreme hardship if the applicant's waiver application were denied. The record shows that is currently fifty years old and has had numerous health problems, including cancer, a back injury, surgeries for carpal tunnel and a meniscus tear, and Morton's Neuroma. In addition, the record indicates that twenty-three year old son, who lives with her, has been diagnosed with bipolar disorder, attention deficit-hyperactivity disorder, substance abuse, and oppositional defiant disorder. In addition, has made two suicide attempts and had previously been committed to a juvenile correctional facility. Moreover, oldest son, was committed to a residential drug rehabilitation program to address his addictions. The record contains a copy of the death certificate of three-year old son. According to her husband's presence in the United States is essential to the happiness and physical and emotional well-being of her entire family. Considering the myriad of serious, on-going problems in life, the AAO finds that the effect of separation from the applicant goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Moreover, moving to Mexico to avoid separation would be an extreme hardship for. The record shows that was born in the United States and has three children from a previous relationship and an eight-year old son with the applicant, all of whom were born in the United States. According to if she relocated to Mexico to be with her husband, although she would bring their son, her children from a previous relationship would not move with her. If were to relocate to Mexico, she would be separated from her three older children, a particularly difficult situation considering that two of her children have extremely serious mental health and substance abuse problems. Moreover, the AAO recognizes that has worked for the same employer for more than twenty years and fears she would be unable to find employment in Mexico because she does not speak Spanish. Letter from dated October 24, 2006 (letter from the general manager stating that has been a full-time employee since the restaurant's grand opening on September 26, 1990). Considering all of these factors cumulatively, the AAO finds that the hardship would experience if she moved to Mexico to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that faces extreme hardship if the applicant is refused admission.

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 and periods of

unauthorized employment. The favorable and mitigating factors in the present case include: significant family ties in the United States including his U.S. citizen wife, child and step-children; the extreme hardship to the applicant's wife and her children if he were refused admission; numerous letters of support describing the applicant as an exemplary employee, a good husband, and excellent father; and the fact that the applicant has not had any arrests or convictions in the United States.

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.