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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]

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DATE: JAN 03 2012 Office: CIUDAD JUAREZ FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality 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,

for

Perry Rhew
Chief, Administrative Appeals Office

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

The record establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in July 2000[1] and did not depart the United States until February 2008. Therefore, the applicant accrued unlawful presence from July 29, 2004, when he turned 18 years of age, until February 2008. The applicant was thus 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. The applicant does not contest this finding of inadmissibility. Rather, he is seeking a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated July 31, 2009.

In support of the appeal, the applicant's counsel submits a brief and several exhibits, including a group health plan statement from applicant's former employer; 2006 W-2 Wage and Tax Statements and joint income tax return of the applicant and his wife; 2008 W-2 Wage and Tax Statements and income tax return of the applicant's wife's parents; and his wife's voter registration card. The record also includes documents previously submitted in support of applicant's Form I-601 Waiver Request, including: a psychosocial assessment, counseling report, and medical prescription; medical records; a bank statement, several statements from the applicant's wife; statements in support; birth certificates; a marriage certificate; and green cards. The entire record was reviewed and considered in rendering this decision.

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

> 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.
> >
> > . . . .

[1] Based on applicant's July 19, 1986 birthdate, the AAO notes that his parents brought him to the United States in the month he turned 14.

(iii) Exceptions

(I) Minors – No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

. . . .

(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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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-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, although 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, although 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 asserts that the applicant's U.S. citizen spouse will suffer emotional, mental, and financial hardship if the applicant is unable to reside in the United States. When they married in 2006, the applicant had just turned 20 and his wife was 17 years old. A mother at 18, she states that she is suffering emotional hardship due to her spouse's inadmissibility because she wants the family to be united. The applicant's wife explains that she grew up in a close knit family, and that her two lawful permanent resident parents and U.S.-born brothers all live in Las Vegas, Nevada, where she lived together with the applicant until his departure. According to a psychosocial assessment of the couple prior to the applicant's departure, before marrying, she had never been apart from her parents and brothers for more than a few days. *Psychosocial Assessment of* [redacted] dated February 19, 2008. After observing her high level of anxiety and symptoms of depression including appetite loss and insomnia as her husband prepared to depart for consular processing, the assessment concluded, "[n]ot only is she overwhelmed by the potential separation, but at her young age of 19, she is not ready emotionally for the potential impact caused by separating her from her family." *Id.*

at 3. The record shows the applicant's wife subsequently being diagnosed with "Depression Disorder" and being prescribed anti-depressant medication within a month of applicant's departure. Counsel reports she was so distraught that, in May 2008, she took her infant to Mexico and tried for three months to live there with applicant. She had to abandon this effort due to their baby's health problems and return to the United States. Adding to her depression is anxiety about the child's inability to understand the absence of the father who took an active, co-parenting role. *Letter of* [redacted] dated March 26, 2008.

Regarding the claim of financial hardship, the 2006 joint tax return and W-2s confirm that applicant was the sole provider for his wife and child before he returned to Mexico. In addition, the record reflects that loss of the medical benefits provided through the applicant's employer imposed another economic burden on his family; until the applicant's wife was able to obtain work, she and her child had to pay cash for medical services previously covered by the applicant's insurance. Applicant's counsel claims that the applicant's departure ended his five years of U.S. employment. He says the family exhausted the small savings it had set aside and needs his income to avoid going on welfare. Letters from the applicant's colleagues, friends, and in-laws confirm the economic hardships associated with his inadmissibility.

The record reflects that the cumulative effect of the emotional, mental, and financial hardships the applicant's spouse is experiencing due to her husband's inadmissibility rises to the level of extreme. The AAO thus concludes that, were the applicant's spouse to remain in the United States without the applicant due to his inadmissibility, she would suffer extreme hardship.

The applicant's spouse contends that she would experience hardship if she relocated abroad to reside with the applicant due to his inadmissibility. She is born and educated in the United States, and her parents and siblings all live nearby. She has been living with her parents, who are helping financially, including sending money to applicant, and she is concerned that her child's medical history and lack of Spanish fluency, as well as violence in Mexico, would make living there both dangerous and damaging to their future prospects. Despite all these concerns, after receiving counseling and medication for depression, the applicant's wife moved to Mexico to be with him. This relocation attempt lasted only three months, as counsel reports that their daughter became extremely ill and was constantly visiting medical clinics for treatment. The applicant's wife states that, due to her child's medical problems, including increasingly severe asthma attacks, she returned to the United States, which only caused her greater anxiety, stress, and depression.

The record establishes that the applicant's spouse has no ties to Mexico, but has an extensive support network here. Relocation would mean leaving her family, most notably her parents and siblings, and her community. It would also cause her to worry about her daughter's health, as well as about their physical safety and financial well-being, in light of the lack of employment opportunities in Mexico. It has thus been established that the qualifying relative would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

The documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to

reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship.

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 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 evaluating whether relief is warranted in the exercise of discretion, the BIA stated:

> 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 favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse and daughter would face if the applicant were to reside in Mexico, regardless of whether they accompanied the applicant or remained in the United States; the applicant's lack of a criminal record; supporting declarations from family members, friends, and co-workers; the applicant's apparently stable U.S. employment for five years prior to his departure; and the fact that applicant's parents brought him with them over 11 years ago as a 13- or 14-year old when they entered the country unlawfully. The unfavorable factors in this matter are the applicant's unlawful entry into the United States and unlawful presence while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8

U.S.C. § 1361. The applicant has met that burden. Accordingly, this appeal will be sustained and the application approved.

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