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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

[redacted]

DATE: JAN 2 0 2012 Office: MEXICO CITY (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, Mexico City, 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 sometime in 2005 and did not depart the United States until February 2008. The applicant accrued unlawful presence during this entire period and 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, she is seeking a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director,* dated July 16, 2009.

In support of the appeal, the applicant submits documentation including: a divorce decree and child custody order; mental health and psychological evaluations; birth certificates and a green card; and property tax assessments. The record also contains documentation submitted by counsel in support of the original waiver request, including statements from the applicant's husband; a mental health evaluation; medical records and bills; a property deed; household and business expenses; and letters of support. 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.-
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> > (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...

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, while 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

AAO notes that the instant matter exemplifies the importance of aggregating relevant factors to make a final determination as to whether the applicant has shown the requisite hardship.

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 for the applicant asserts that extreme hardship to a qualifying relative warrants waiver of the applicant's inadmissibility. The applicant's U.S. citizen spouse contends that he will suffer mental hardship, as well as interrelated physical and financial hardships, if the applicant is unable to reside in the United States. His two statements detail the pain that separation from the applicant has caused him. Regarding the mental component, he offers the circumstances of his prior marriage: its failure due to his wife's instability and eventual abandonment of the family; the resulting court order awarding him primary custody of three children; and his efforts to provide a good home for his children. Further, he claims that the applicant restored his faith in love and marriage, helped fill a void in the lives of his children who never saw their mother again after she left, and provided a partner who both treats his children as if they were her own and inspires him once again to plan for the future.

The record contains three psychological evaluations of the qualifying relative; two of these are Mental Health Evaluations from the same clinical provider and contain detailed factual summaries, while the third is an Intake Note for an outpatient service that appears to be the basis for further counseling. *See Mental Health Evaluations,* by Modern View Clinical Services, and *Intake Note,* by the Hope Family Health Center's Family Counseling Services. All three assessments are signed by licensed clinical social workers and are based on their interviews with the qualifying relative. Notably, the successive reports from Modern View show an evolution from the original diagnosis of moderately severe adjustment disorder with high risk of developing severe depression to one of moderately severe major depressive disorder with high risk of developing a debilitating emotional crisis. Although the third report gives a different diagnosis of chronic, low-grade depression and generalized anxiety, the AAO observes that the Intake Note corroborates the applicant's husband's description of his hardships since the separation from his wife began.

Letters from two of his sisters describe the devastating impact of trying to console his children about the disappearance of their biological mother when "his hurt was just as deep as theirs." They further state that, after struggling to keep his family together, he met the applicant who has since provided "great support for [him] and the children," and allowed them to become a very happy family. *Statements of* [redacted] *and* [redacted] both dated March 4, 2008.

Regarding his physical and financial hardship claims, the applicant's husband claims that severe back pain curtails his activities, generally, and in particular limits his lifting ability, as well as the capacity to stand or even sit for extended periods. The record contains the evaluations of Mexican and U.S. medical doctors, as well as of an osteopath, regarding the debilitating effects of his chronic lower back pain stemming from osteoarthritis and three herniated discs; one report suggests the back condition should be considered a disability. The record reflects that the applicant's husband is restricted from heavy lifting, and the applicant's husband notes that it was the applicant whose help allowed the business to earn extra income from longer opening hours, who ran the laundromat during the 20 days that he stayed at his son's hospital bedside, and, then, who assisted his son's post-discharge recovery from severe injuries suffered in a car accident.

Without the applicant's help, the family's business appears to have suffered due to her husband's inability to maintain hours typical of self-service laundries. Despite the lack of income tax return documents or other financial data, the totality of the evidence supports the qualifying relative's assertion that his disability coupled with his wife's absence resulted in diminished profits from the family business that was the family's sole source of income. He also claims that his wife's inability to find work in Mexico has required him to send money to help out with living expenses for her and their daughter, which has further burdened the income from a business already adversely affected by her absence. The qualifying relative has thus shown that separation from the applicant has imposed additional economic burdens by eliminating the applicant's contribution to household maintenance.

The record reflects that the cumulative effect of the mental, physical, and financial hardships the applicant's spouse is experiencing due to his wife'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 her inadmissibility, he would suffer extreme hardship.

The qualifying relative asserts that he would experience extreme hardship if he relocated abroad to reside with the applicant due to her inadmissibility. He says that all of his family is here, including his two sisters, three children of his first marriage who range in age from 17 to 24, and the applicant's 11 year-old daughter. The applicant's husband is 50 years old and notes that, besides having no ties to Mexico (other than the applicant) and no prospects of making a living from the type of business he has here, there is no chance anyone would hire him due to his disability. He says this would leave the applicant as the only possible breadwinner, but that due to economic conditions in Mexico, any job she could find would be insufficient to support the family. *Statement of* [redacted] dated April 14, 2008.

Besides pointing out the potential difficulty of supporting his family in Mexico, the applicant's husband expresses concern for the health of his youngest daughter, who was under medical care for

liver problems and anemia as an infant when the applicant left the country with her; the record reflects numerous tests on the baby dating to 2008 to determine the cause of high liver enzyme levels, but contains no final diagnosis. Finally, regarding the qualifying relative's claim that Mexico is unsafe because of ongoing wars between drug lords and police, the AAO notes that the U.S. Department of State stated earlier this year regarding the security situation in Mexico,

> Due to ongoing violence and persistent security concerns, you are urged to defer non-essential travel to the states of Tamaulipas and Michoacán, [...]
>
> . . . .
>
> You should be especially aware of safety and security concerns when visiting the northern border states of Northern Baja California, Sonora, Chihuahua, Nuevo Leon, and Tamaulipas. Much of the country's narcotics-related violence has occurred in the border region. More than a third of all U.S. citizens killed in Mexico in 2010 whose deaths were reported to the U.S. government were killed in the border cities of Ciudad Juarez and Tijuana. Narcotics-related homicide rates in the border states of Nuevo Leon and Tamaulipas have increased dramatically in the past two years.
>
> . . . .
>
> **Tamaulipas:** You should defer non-essential travel to the state of Tamaulipas. In an effort to prevent the military or police from responding to criminal activity, TCOs [Transnational Criminal Organizatons] have set up roadblocks [...] in which armed gunmen carjack and rob unsuspecting drivers. [...]
>
> Be aware of the risks posed by armed robbery and carjacking on state highways throughout Tamaulipas. In January 2011, a U.S. citizen was murdered in what appears to have been a failed carjacking attempt. While no highway routes through Tamaulipas are considered safe, many of the crimes reported to the U.S. Consulate General in Matamoros took place along the Matamoros-Tampico highway, particularly around San Fernando and the area north of Tampico.

Travel Warning-Mexico, U.S. Department of State, dated April 22, 2011.

The record indicates that the applicant is residing in Tamaulipas, which is specifically mentioned in the warning, and U.S. citizens are generally advised to defer travel there. The applicant has thus established that her qualifying relative would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

The documentation in the record, when considered in its totality, reflects that the applicant has established that her 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 children 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 apparent lack of a criminal record; supporting statements; the applicant's apparent dedication to the family business, as well as to her stepchildren and children alike; the applicant's apparent integration into the local community; and the passage of over six years since the applicant's unlawful entry to the United States. 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 sustained that burden. Accordingly, this appeal will be sustained and the application approved.

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