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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: JUL 23 2012 Office: CIUDAD JUAREZ, MEXICO 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,

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. The waiver application will be approved.

The record reflects that the applicant, a native and citizen of Mexico, entered the United States without authorization in November 1994 and remained until September 2007. The applicant 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 does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with his 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 denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director,* dated December 22, 2008.

The record contains the following documentation: attorney brief in support of appeal; statements by the applicant's spouse; psychological reports for the applicant's spouse and daughter, financial documentation; and letters of support. The entire record was reviewed and considered in rendering a decision on the appeal.

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.
> >
> > . . . .
> >
> > (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 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. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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.

Counsel contends that the applicant's spouse is suffering from financial hardship since the applicant returned to Mexico in 2007. *See Brief in Support of Appeal.* Counsel states that the applicant's spouse is currently living in her parent's home, and, as she cannot support herself and her children, financial support is being provided by her parents. Counsel further states that the applicant's spouse worked as a day care assistant until 2005, when the applicant's first child was born, and that the applicant's spouse has not worked since that time, and has given birth to two more children. The applicant's spouse also states that she has not worked since 2005. Counsel notes that the applicant's spouse only has a high school education and minimal work experience. A financial document submitted in 2007 indicated that the annual household expenses for the family was $16, 050, and that the applicant's spouse was unemployed. The record also includes financial documentation indicating that the applicant's spouse currently receives food stamps. In the absence of the applicant, the applicant's spouse is a single parent with three small children, and the record shows that she is having difficulty supporting the family on her own.

Counsel also asserts that the applicant's spouse is suffering from emotional hardship. *See Brief in Support of Appeal.* The record includes a document from a doctor stating that the applicant's spouse is under her care and has been seeing a therapist for depression. The record also includes a letter from a clinical therapist noting that the applicant's spouse attended behavioral health appointments, and was on a waitlist to see a psychiatrist.

The record further includes documentation stating that the applicant's youngest child is suffering developmental problems for speech and language. A letter from a licensed clinical professional counselor states that applicant's daughter is receiving in-home therapy sessions, sessions that require the applicant's spouse to be present. The letter states that the applicant's spouse is doing her best, but is clearly struggling with loneliness, anxiety, and depression, and was referred to a psychiatrist.

As noted above, under section 212(a)(9)(B) of the Act, children are not deemed to be "qualifying relatives." However, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. The record indicates that the developmental problems of the applicant's daughter are causing hardship to the applicant's spouse.

The applicant's spouse has established that she would experience extreme hardship in the United States should the applicant's waiver not be granted. She has established that she is having financial difficulty, that she relies on public assistance, and as a single mother of three small children, that she is unable to support her family. In addition, the applicant's spouse has shown that she is suffering emotionally, and that her psychological hardship is compounded by the speech and language problems her youngest daughter is experiencing. These hardships, when considered in the aggregate, are beyond the common results of removal or inadmissibility.

In addition, the record indicates that the applicant's spouse would experience hardship were she to relocate to Mexico with the applicant. The applicant's spouse was born in the United States, and her family members reside in the United States. Counsel notes that conditions in Mexico are not safe, and that the violence in Mexico is escalating. Counsel states that if the applicant's spouse and family were to relocate to Mexico, the applicant's spouse would have constant fear and worry for her safety, and the safety of her children. The AAO notes that the U.S. Department of State has issued a travel warning for Mexico specifically referencing Zacatecas, where the applicant resides.[1]

Thus, based on the evidence on the record, the applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Mexico to reside with the applicant.

The AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms,

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[1] As noted by the U.S. Department of State:

> You should defer non-essential travel to the state of Zacatecas except the city of Zacatecas where you should exercise caution. The regions of the state bordering Durango and Coahuila as well as the cities of Fresnillo and Fresnillo-Sombrete and surrounding area are particularly dangerous. The northwestern portion of the state of Zacatecas has become notably dangerous and insecure. Robberies and carjackings are occurring with increased frequency and both local authorities and residents have reported a surge in observed TCO activity. This area is remote, and local authorities are unable to regularly patrol it or quickly respond to incidents that occur there. Gun battles between criminal groups and authorities occur in the area of the state bordering the state of Jalisco. There have also been reports of roadblocks and false checkpoints on highways between the states of Zacatecas and Jalisco. The city of Fresnillo, the area extending northwest from [redacted] and highway 49 northwards from Fresnillo through Durango and in to Chihuahua are considered dangerous. Extreme caution should be taken when traveling in the remainder of the state.

Travel Warning-Mexico, U.S. Department of State, dated February 8, 2012.

conditions and procedures as she may by regulations prescribe. 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 . . . 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, "balance 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 favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse and U.S. Citizen 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 fact that the applicant resided in the United States for more than 10 years; the applicant's apparent lack of a criminal record; and support letters from the applicant's spouse's family members. 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 that the applicant has established that the favorable factors in his 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.