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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: MAR 02 2012 Office: MEXICO CITY, MEXICO 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 (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, 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. She 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 one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen and has two U.S. citizen children. She 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 24, 2009.

On appeal, the applicant's spouse explains how his business is failing due to the applicant's absence, and describes several financial hardships impacting him due to the applicant's inadmissibility. He asks that United States Citizenship and Immigration Services (USCIS) approve the applicant's waiver. *Attachment, Form I-290B*, received on October 2, 2009.

The record includes, but is not limited to, several statements from the applicant's spouse; copies of court records related to custody proceedings and child support payments for the applicant's spouse's son from a previous marriage; copies of levy notices, credit card cancellation notices past due statements, vehicle repossession notices, lawsuits filed against the applicant's spouse and service cancellations; copies of medical bills related to the applicant's spouse's son; copy of a [redacted] Independent School District developmental evaluation pertaining to the applicant's spouse's son; copies of educational records related to the applicant's spouse's son; copy of a Deliberation by the [redacted] noting the applicant's spouse's son qualifies for special education services; and a statement from [redacted] pertaining to the mental health of the applicant's spouse, dated September 23, 2009; pictures of the applicant, her husband and their daughter; a letter from the applicant's employer, tax records and pay stubs for the applicant's spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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-
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> . . . .
>
> (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.
>
> . . . .

The record indicates that the applicant entered the United States without inspection in or about June 1995 and remained until she departed in August 2008. The applicant filed an adjustment application on September 10, 2006, which was denied on March 21, 2007. Therefore, the applicant was unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provision of the Act until September 10, 2006, and again from March 21, 2007, until August 2008, and is now seeking admission within ten years of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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, 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.

The applicant's spouse has submitted a statement in which he describes a range of impacts related to the applicant's inadmissibility. He discusses in detail how the applicant's departure has resulted in the collapse of his business, and how he is struggling to generate income without her assistance. He explains that in addition to coping with the failing business and financial collapse, he is solely

responsible for the care of his children, one of whom is involved in a custody arrangement. *Statement of the Applicant's Spouse*, dated March 15, 2011. He further explains that his children are being heavily impacted by the applicant's absence, and are suffering emotional and developmental problems as a result of the separation.

As discussed above, children are not qualifying relatives in this proceeding. As such, any impact on them is only relevant to the extent that it impacts the qualifying relative, in this case the applicant's spouse. The record contains several documents related to the educational development of the applicant's spouse's son. There are evaluations from his school district and a determination that he qualifies for special needs services, requiring additional tutoring and a heightened standard of care both at home and school. A statement from the boy's teacher describes the emotional and behavioral impact on him that have arisen since the applicant's departure. Although it is common for children to experience impacts due to the inadmissibility of a parent, in this case the evidence is sufficient to establish that due to the heightened standard of care required by his son, and the educational and development impacts arising from separation, the applicant's spouse will experience an uncommon hardship in having to care for their two children without the applicant.

The record contains a statement from [redacted] asserting the applicant's spouse is being treated for anxiety neurosis and has been prescribed medication to help him cope with his condition. The AAO will give some consideration to the emotional impact on the applicant's spouse.

The applicant's spouse provides a detailed explanation of his financial hardship. He explains that, as his business suffered and his income dropped due to the applicant's absence, he began to fall behind on credit cards and other expenses related to his business and family life. The applicant's spouse lays out his monthly financial obligations and then explains the additional financial impacts that have arisen due to the applicant's inadmissibility. The record contains sufficient evidence to corroborate the existence of significant legal bills, medical bills, child support payment delinquencies and service cancellations. There is also documentation of levies, wage garnishments, civil proceedings filed against the applicant's spouse and notices of repossession for two automobiles. This evidence is sufficient to establish that the applicant's spouse is experiencing an uncommon financial hardship.

When these hardship factors are considered in the aggregate with the more common impacts of separation, it is clear they rise to a degree constituting extreme hardship. Although the applicant has established that a qualifying relative will experience extreme hardship upon separation, the record must also establish that a qualifying relative will experience extreme hardship upon relocation.

The applicant's spouse has asserted that he would not be able to uproot his family to relocate to Mexico with the applicant because he has two children from a prior marriage and his former spouse would not allow him to take the children to Mexico. *Statement of the Applicant's Spouse*, received October 22, 2008. The record contains court records related to the applicant's spouse's custody

struggle with his former spouse, and can therefore establish that he would experience a separation hardship from his children if he were to relocate to Mexico.

The AAO notes that the applicant's spouse has a significant number of community ties, having worked at his current business for 15 years, as well as a long term residence in the United States. Having to sever these ties, including those with his children's educational system, constitute a physical impact and will be considered when aggregating the impacts on the applicant's spouse.

The applicant's spouse also asserted that the conditions in Mexico are dangerous, and that it causes him anxiety to contemplate the applicant or his children living there. The AAO takes note of the recent Travel Warning for Mexico, urging Americans to use caution due to the security conditions there.

When the impacts asserted on relocation are examined in the aggregate, the AAO can determine that the applicant's spouse will experience uncommon impacts rising to the degree of extreme hardship upon relocation.

The applicant has established that a qualifying relative will experience extreme hardship. As such, the AAO may now move to consider whether the applicant warrants a waiver 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 "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 AAO finds that the unfavorable factors in this case include the applicant's entry without inspection, unlawful presence and unauthorized employment. The favorable factors in this case include the presence of the applicant's spouse, the presence of her U.S. citizen children and the extreme hardship her spouse would experience due to her inadmissibility, and the lack of any criminal record during her residence in the United States. Although the applicant's immigration violations serious matters, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The director's decision will be withdrawn and the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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 application is approved.