U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: AUG 0 6 2013 OFFICE: ANAHEIM, CA FILE:

IN RE: APPLICANT:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 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 and seeking readmission within 10 years of her last departure from the United States. The applicant seeks 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 failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated November 27, 2012.

On appeal, filed by the applicant on December 27, 2012 and received by the AAO on April 11, 2013, the applicant's spouse contends he experiences documented emotional and financial difficulties without the applicant present. A psychological evaluation, copies of household bills, and other financial documents are submitted in support.

The record includes, but is not limited to, the documents listed above, statements from the applicant's spouse, financial and medical records, articles on country conditions in Mexico, other applications and petitions, and evidence of birth, marriage, divorce, residence, and citizenship. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

> (B) ALIENS UNLAWFULLY PRESENT.-
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> (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.
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> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.
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> . . . .

> (v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant admitted under oath that she entered the United States without inspection in February 2001, and returned to Mexico in March 2012. Inadmissibility is not contested on appeal. The AAO therefore finds the applicant accrued more than one year of unlawful presence, and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. citizen spouse.

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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 contends he experiences financial and emotional difficulties without the applicant present. In an evaluation, a marriage and family therapist discusses the spouse's history, indicating he grew up in poverty in Mexico, was beaten when he was a child, and relocated to the United States at 19 years of age. The therapist opines the spouse was then suffering from major depressive disorder. The therapist describes emotional hardships the spouse currently experiences due to the applicant's absence, as well as her three miscarriages. The therapist concludes the applicant's spouse suffers from recurrent major depressive disorder, as well as post-traumatic stress disorder from originating from a crime he was present for at his aunt's house in Pittsburg. The spouse indicates he has been going to therapy for these emotional issues, but he has also been suffering from insomnia, mood changes, high levels of tension, and high blood pressure. He adds that he worries about the applicant, given that she is currently living in Mexico. The spouse also asserts he suffers from financial difficulties without the applicant present. Documentation of income and household expenses is submitted in support.

The spouse moreover claims he cannot relocate to Mexico. He explains he and the applicant would have to forgo fertility treatment there due to the expense. The spouse adds he would lose the health benefits he has through his employer if he relocated. He further asserts he would not be able to find adequate employment in Mexico, and he indicates he fears he would be the victim of a crime, in Mexico where the applicant currently resides.

The record reflects that the applicant's spouse experiences financial hardship without the applicant present. The applicant has submitted sufficient evidence demonstrating that her spouse's household expenses exceed his income. Furthermore, the record contains evidence indicating the spouse's wages have been garnished due to a judgment, which further exacerbates his financial difficulties. Given this documentation, the AAO finds the applicant has demonstrated her spouse experiences financial hardship without the applicant present.

The applicant has additionally submitted sufficient evidence of emotional and psychological hardship. The record contains documentation that the spouse suffers from psychological difficulties stemming from his childhood as well as the current separation from the applicant. Given this, along with the documentation on the spouse's financial difficulties, the AAO finds there is sufficient evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, psychological / emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without her spouse.

The applicant has also demonstrated her spouse would experience extreme hardship upon relocation to Jalisco, Mexico. The record reflects although the spouse is a native of Mexico, he has lived in the United States for over 30 years, and has significant family ties to this country. Moreover, relocation would require the applicant's spouse to lose his current employment and benefits, which may result in difficulties given his financial situation. In addition to financial and family-related hardship, the spouse's assertions on safety concerns in , Mexico are supported by the U.S. Department of State's travel warning, which indicates that the area where the applicant resides is unstable, and gun battles between criminal groups and authorities occur with some frequency. *See Travel Warning: Mexico, U.S. Department of State,* July 12, 2013.

In light of the evidence of record, the AAO finds the applicant has established that her spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, safety-related, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

Considered in the aggregate, the applicant has established that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied.

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 a 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.

The unfavorable factors include the applicant's entry without inspection and unlawful presence, as well as evidence that she was employed in the United States without authorization. The favorable factors include the extreme hardship to the applicant's spouse, her payment of U.S. income taxes, and her lack of a criminal history.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.