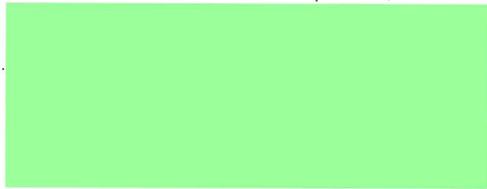


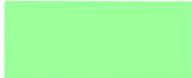
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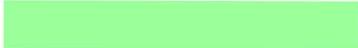


U.S. Citizenship  
and Immigration  
Services



Date: **FEB 27 2013** Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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:



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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Ciudad Juarez Field Office, Mexico, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion. The motion will be granted, and the underlying application is approved.

The applicant, a native and citizen of Mexico was found inadmissible under 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), having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant now 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) in order to reside in the United States with his U.S. citizen spouse. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his spouse.

The Field Office Director concluded that the hardship the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute. The applicant appealed the decision and the AAO dismissed that appeal, finding that the hardship that the applicant's spouse would suffer did not meet the requirements under section 212(a)(9)(B)(v) of the Act. The applicant filed a motion to reconsider the AAO decision.

On motion, counsel states that field office director erred in finding the evidence submitted with the application for waiver did not clearly demonstrate extreme hardship to the applicant's spouse in the aggregate, particularly emphasizing a psychological evaluation indicating the applicant's spouse shows symptoms of depression and anxiety, as well as statements from the qualifying relative and family members expressing financial hardships and safety concerns for the applicant's spouse. Counsel asserts that in the aggregate the evidence supports a finding that the applicant's spouse has suffered extreme hardship due to the applicant's inadmissibility and their continued separation.

A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motion.

The applicant is inadmissible under INA § 212(a)(9)(B)(i)(II) and does not dispute his inadmissibility. A waiver is available to the applicant under INA § 212(a)(9)(B)(v) dependent on his showing that the bar to his admission would impose extreme hardship on 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-Morales*, 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).

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. INS*, 138 F.3d 1292, 1293 (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 AAO previously found that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico with the applicant. Therefore, this decision will not be disturbed. However, the AAO also determined the applicant failed to demonstrate that in the aggregate the qualifying spouse

would suffer extreme hardship based on separation, due to financial, psychological and emotional difficulties.

The applicant indicates that upon reconsideration the evidence will demonstrate his spouse is in fact suffering extreme hardship in the aggregate based on separation, because she is unable to adequately support herself, and must depend on her parents for housing and financial assistance. The applicant indicates that while he was in the United States they were in the process of saving to buy their own home, but have since used all of the savings to assist in the support of the family during his inadmissibility. The applicant also indicates that his spouse has put her educational aspirations on hold because she must now work to aid the family in difficult jobs such as an agricultural picker in California while he is in Mexico, although she was previously a homemaker. The applicant indicates that he is unable to provide sufficient financial contributions to his family in the United States because of his limited employment resources in Mexico working as a truck driver. The applicant states that he has been robbed at gunpoint on three occasions while attempting to work and support his family, causing further hardship for his spouse. The applicant submits statements from the qualifying spouse and her parents indicating they have all sold numerous possessions, and taken out loans in order to assist in maintaining the applicant's family, but it has become extremely difficult for the parents to continue in caring for their own needs while assisting in this way. The applicant also submits copies of a consumer loan from [REDACTED] dated November 4, 2010, in the names of both [REDACTED] the applicant's spouse and [REDACTED] her mother, in order to further demonstrate these assertions. The applicant's in-laws also state that they have paid ransom demands on two occasions to criminal organizations in Mexico in order to keep the applicant out of harm's way, which has placed them into further financial constraints. The applicant's in-laws state they feel they must assist in this way because they worry about the suffering of their daughter without the applicants' presence in the United States for support. The applicant also submits various photos illustrating injuries received during these altercations in Mexico within the evidence presented.

The applicant also indicates that his spouse is suffering psychologically and emotionally based on their continued separation. The applicant indicates that his spouse is extremely anxious about his safety in Mexico and also worries about the effects of continued separation on their young children who are very close to their father. The applicant submits a psychological evaluation from [REDACTED] Ph.D., dated February 26, 2009 for the purpose of offering further insight into the applicant's spouse current mental state due to his inadmissibility. According to Dr. [REDACTED] the applicant's spouse suffers from depression, anxiety, disruptive sleep patterns, excessive crying, intense chest pains and feelings of stress, which were not previously present and are believed to be related to both her husband's immigration proceedings, and his safety issues while in Mexico. The evaluation also goes on to conclude that the applicant's spouse would need intensive individual therapy and possible pharmaceutical treatment to address her depressive symptoms if their separation continues, but notes the applicant's spouse does not currently maintain medical insurance. The applicant also submits evidence from [REDACTED] dated October 30, 2010, indicating his spouse suffers with ovarian cysts which are exacerbated by stress.

After a further review of all of the evidence it is concluded that the applicant has demonstrated that his spouse is suffering extreme hardship in the aggregate due to their continued separation. The documentary evidence demonstrates that without the applicant's presence in the United States, his spouse faces particular difficulties because she must rely on her parents for regular assistance,

causing uncommon strain on the entire family's resources. The applicant's spouse has also been forced to forgo further educational aspirations and plans for their own home in order to work in physically strenuous jobs away from her children, in order to assist the family's financial needs. The applicant's spouse is also living with physical ailments which according to medical professionals, are aggravated by stress, while also caring for the needs of two young children without the applicant's presence. Because of the continued stress due their separation, and her continued fear for the applicant based on past violent experiences, along with the continued worry about his absence in their children's lives as well as her own, the applicant's spouse is manifesting a series of psychological and emotional difficulties, such as intense chest pains, sleeplessness, depression, anxiety and, excessive crying, which are affecting her own daily life in a negative way beyond the scope of what would typically be anticipated due to separation based on inadmissibility.

The AAO consequently finds that when considering all elements of hardship in the aggregate, the applicant has demonstrated his spouse is suffering hardship beyond that which would normally be expected under the circumstances of a loved one's inadmissibility to the United States due to separation.

Accordingly, after a review of the documentation in the record, and considered in its totality, the applicant has established that his U.S. citizen spouse would suffer extreme hardship should the applicant continue to reside outside the United States.

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.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

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 BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to continue to reside in Mexico, and she remained in the United States, the applicant's community and family ties in the United States, the letters from community members that illustrate the important role that the applicant played in the life of his family in the United States, and the applicant's apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's unlawful entry and presence 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 case outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

The AAO finds that the applicant has presented sufficient evidence to illustrate, when considered in the aggregate, that the hardship to the applicant's spouse due to separation would rise to the level of extreme.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the INA, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the underlying application will be approved.

**ORDER:** The motion is granted, and the underlying application is approved.