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

U.S. Citizenship and Immigration Services

DATE: JAN 02 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE:

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:

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 Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Ciudad Juarez, Mexico (Nebraska Service Center), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects the applicant is a native and citizen of Mexico who entered the United States without admission in 1997. She remained in the country until December 2010, at which time she traveled to Mexico. The applicant was found to be inadmissible to the United States 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), for having been unlawfully present for more than one year and seeking readmission within 10 years of her departure from the United States. The applicant is married to a U.S. lawful permanent resident, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative. 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), in order to live in the United States with her husband and children.

In a decision dated December 6, 2011, the director concluded the applicant had failed to establish her husband would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that her husband will experience extreme emotional, financial and physical hardship if she is denied admission into the United States. To support these assertions counsel submits letters from the applicant's husband and academic records for the applicant's children.

The record contains letters from family members and their church minister, a psychological evaluation for the applicant's husband, financial evidence, medical documentation, country-conditions evidence, and citizenship and identification information for family members. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B)(i) of the Act provides in pertinent part that any alien 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.

In the present matter, the applicant entered the United States without admission in 1997, and she departed the country in December 2010. Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for 10 years. The applicant was unlawfully present in the United States for over one year, and she has not been absent from the country for 10 years. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides in pertinent part:

> Waiver.-The Attorney General [now, Secretary, Department 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 [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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez-Moralez,* 21 I&N Dec. 296 (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,* 22 I&N Dec. 560, 565 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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, 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 applicant's spouse is a U.S. lawful permanent resident. He is therefore a qualifying relative under section 212(a)(9)(B)(v) of the Act. The applicant refers to hardship their U.S. citizen children would experience if the waiver application is denied. Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Hardship to the applicant's children will therefore not be considered, except as it may affect the applicant's qualifying family member.

The applicant's husband states that he and the applicant have been married for over 16 years, they have four U.S. citizen children between the ages of 6 and 15, their families are in the United States, and they own a home in the United States. Their children have remained with him in the United States, he has no one to help care for their children, and he relies on their oldest daughter to help with childcare. He has worked at the same grocery store for over 30 years, where he works a nightshift. As a result he gets very little sleep, between getting up early to prepare their kids for school, picking the children up from school, feeding the children and helping them with their homework, getting them to bed, and then going to work. He also worries about the effect of their separation from their mother on their children; the children frequently cry and get sick for no reason. Additionally, their sons are getting into trouble at school, and he fears they will join gangs. He feels constantly depressed and has trouble concentrating at work, and he also fears he could lose his job. In addition, he worries about the applicant's safety in Guerrero, Mexico because she is alone there, and she lives in a violent and crime-ridden area. Financially, he is struggling; he cannot afford to visit the applicant often and must send money to support her in

Mexico. He has fallen behind on his financial obligations. Moreover, he would lose his U.S. lawful permanent resident status and he fears for the safety of his family if they moved to Mexico. They have no home there, and because he does not have an education or specialized skills, he does not believe he would be able to find work in Mexico.

A clinical pastoral consultant diagnoses the applicant's husband with depression, anxiety and related stress due to his separation from the applicant. Their children's emotional hardship is described in a letter from their daughter. Academic evidence shows that their 13 year-old son's grades have fallen in the last year. He has been suspended six times for behavior-related incidents and will not be allowed to remain at his school absent a significant change in his behavior.

Financial evidence reflects that the applicant's husband owns their home, he has received past due notices for medical bills, and he sends up to $300 a month to the applicant in Mexico.

Letters from their daughter and their church minister attest to the applicant's good character, and to the hardship the applicant's husband and family are experiencing due to their separation from the applicant, and country-conditions articles discuss the escalating drug-related violence and crime in Guerrero, Mexico.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's husband would experience hardship that rises above the common results of removal or inadmissibility, if he remains in the United States, separated from the applicant. Evidence establishes the applicant's husband is struggling financially and that he is suffering from depression and anxiety due to his separation from the applicant and his concerns regarding his children's welfare in the United States and the applicant's safety in Mexico. Moreover, a 2012 Department of State travel warning confirms the applicant's husband's concerns about unsafe and violent conditions in Guerrero. *See* http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html. The cumulative evidence establishes the applicant's husband will experience extreme hardship if he remains in the United States, separated from the applicant.

The evidence, considered in the aggregate, establishes the applicant's husband would also experience hardship beyond that normally experienced upon removal or inadmissibility if he relocated to Mexico to be with the applicant. A lengthy departure from the United States could cause him to lose his U.S. lawful permanent resident status. *See* section 223 of the Act, 8 U.S.C. § 1203. Furthermore, his safety concerns in Mexico are confirmed by at least one U.S. government report recommending that non-essential travel to the state of Guerrero be deferred and reporting that the state has seen an increase in violence, including a dramatic increase in murders in Acapulco. *See* http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html.

The AAO finds that the applicant merits a waiver of inadmissibility 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(a)(9)(B) of the Act relief is warranted in the

exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 s/he is excluded and/or 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 unfavorable factors in this matter are the applicant's unlawful entry and accrual of unlawful presence in the United States between 1997 and December 2010. The favorable factors are the hardship the applicant's husband and family would experience if the applicant is denied admission into the United States, her extensive family ties to the United States, the applicant's good moral character, and her lack of a criminal record. The AAO finds that although the immigration violations committed by the applicant are serious in nature and cannot be condoned, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to his lawful permanent resident spouse as required under section 212(a)(9)(B)(v) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met her burden of proving eligibility for a waiver of her ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. The Form I-601 appeal will therefore be sustained.

ORDER: The appeal is sustained.