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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]

DATE: JUN 04 2013 Office: NEBRASKA SERVICE CENTER 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), and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

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,

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center. 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), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of her last departure, and attempting to enter the United States with an altered travel document. She is married to a United States citizen. 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), and section 212(i) of the Act, 8 U.S.C. § 1182(i).

The 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 September 20, 2012.

On appeal, the applicant's spouse states that he is experiencing a range of hardships resulting in extreme hardship to himself and his family. *Form I-290B*, received on October 17, 2012.

The record includes, but is not limited to: a statement from the applicant; statements from the applicant's spouse; a statement from the father of the applicant's spouse; statements from family members of the applicant's spouse attesting to the family ties and moral character of the applicant's spouse; copies of receipts for money transfers; copies of loan documents and other financial obligations of the applicant's spouse; copies of medical bills for the applicant's spouse; a financial attestation from dated October 4, 2012, pertaining the applicant's spouse; a statement from the applicant's son's pediatrician, in La Piedad, Mexico, dated September 27, 2012; background materials and country conditions materials detailing the conditions in Mexico and drug war violence in photographs of the applicant and her children; copies of medical progress notes and hospital discharge papers for the applicant's spouse; 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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> . . . .
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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 attempted to enter the United States by using an altered Border Crossing Card in 2007. The applicant was allowed to withdraw her application for admission due to the fact that she was a minor at the time, and she voluntarily returned to Mexico. The applicant then re-entered the United States without inspection and took up residence until she departed in January 2011. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.[1]

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.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) In general. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

As discussed above, the applicant attempted to enter the United States by using an altered passport, and is inadmissible under § 212(a)(6)(C)(i) of the Act for having misrepresented her identity. The applicant does not contest these findings.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant who is the spouse, 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 the

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[1] The applicant was voluntarily returned to Mexico as a minor, and thus she was not entered into section 235(b)(1) or section 240 proceedings. In addition, there is no evidence the applicant accrued any unlawful presence prior to her re-entry without inspection in May 2007, and as such, the AAO finds no basis to consider her inadmissible under sections 212(a)(9)(A) or (C) of the Act.

> United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien . . . .

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) 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 any 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 asserts on appeal that he is experiencing financial and emotional hardship due to separation from the applicant. *Declaration of Applicant's Spouse*, dated October 6, 2012. He states that the conditions in Mexico are too violent for the applicant and his children, and that this adds to the emotional stress of separation.

The AAO notes at the outset that the applicant's children are not required to reside in Mexico. In addition, children are not qualifying relatives in these proceedings, and as such, any impacts on them are only relevant to the extent they impact the qualifying relative – in this case the applicant's spouse residing in the United States. That being said, the AAO also acknowledges the drug-related violence occurring in Mexico represents an uncommon physical threat to applicant's spouse and their family members.

The record contains country conditions materials describing the general conditions in Mexico, as well as the overall drug-related violence particularly affecting the border regions of Mexico. The record also contains numerous news articles which specifically chronicle the violence in [redacted] Mexico, where the applicant and her two children reside. The record indicates that both the applicant and her spouse are from this region. The evidence that has been submitted is sufficient to demonstrate that the applicant's spouse would likely experience an uncommon physical and emotional impact related to living in an area suffering sustained, large scale violence and crime.

The AAO takes additional note of instances of crime relating to American citizens or others with money in the challenging border zones. When these observations are taken into account, the AAO can discern that the applicant's spouse would experience substantial physical and emotional hardship upon relocation to [redacted] Mexico. In addition, the applicant's spouse will more than likely

experience a heightened emotional impact due to separation based on the fact that the applicant and his children are residing in the violent conditions of Mexico's border region.

With regard to other impacts related to separation, the applicant's spouse has asserted that he is experiencing a financial impact due to the applicant's inadmissibility. The record does not contain clear evidence regarding where the applicant's spouse works, what his yearly earnings are and what specific financial obligations are in his name. However, the record does contain copies of money transfer receipts, a personal loan attestation from the applicant's spouse's father, other loans related to insurance and utilities, and most notably large medical bills.

The record contains a statement from a friend of the applicant's spouse stating that he works for an agricultural company, but fails to provide any other details. Tax returns submitted for a period when the applicant was present in the United States do not distinguish the incomes of the applicant and her spouse. Nonetheless, even when their joint income is taken into account, it would have not been sufficient to cover the medical bills incurred by the applicant's spouse. In one statement, dated July 30, 2012, the applicant's spouse's owes $17,913, a significant debt.

The applicant's spouse asserts on appeal that he suffers from several medical conditions, including a heart murmur. The record contains sufficient medical documentation to illustrate the applicant's spouse's medical history, tracking his progress on cardiological exams and other problems. In a summarizing statement on November 21, 2011, Dr. states that the applicant has reported extremity pain, anxiety and fatigue, and that he was given medications and referrals to other doctors. He further states that the heart murmur detected on the applicant's spouse was benign. Neither this letter, nor other evidence in the record indicates that the applicant's spouse suffers from a serious medical condition impacting his ability to function on a daily basis. It appears the applicant's spouse has been utilizing emergency rooms to treat routine medical concerns, which is the source of his large medical bills. This does not change the fact that the applicant's spouse has accrued substantial debt, compounded by having to support the applicant and his children in Mexico.

The record contains a letter from Psy. D., dated August 1, 2012, stating the applicant's spouse has "reality based anxiety" pertaining to supporting the applicant and his children. While this statement does not clearly provide a basis for its finding, the AAO will give consideration to this statement and others by family members as an indication that the applicant's spouse will experience an emotional impact related to separation from the applicant.

All asserted impacts and the evidence submitted to establish them are sufficient to demonstrate that the applicant's spouse would experience financial, emotional and psychological impacts due to separation that rise above the common impacts to a degree constituting extreme hardship.

With regard to hardship upon relocation, the AAO finds, as discussed above, that the violent conditions in Mexico constitute a substantial physical and emotional hardship factor for the applicant's spouse.

The record also contains evidence of the applicant's spouse's family ties to the United States, including letters from his mother, a letter from his father who has lent him $7,000, and a brother. The record also contains a number of other statements from friends and acquaintances attesting to his community and family ties.

Although the record does not clearly establish an existing medical condition for the applicant's spouse, the AAO takes note of the fact that the applicant's spouse has been seeking help for medical symptoms he is experiencing. Having to sever ties to the medical community that has pursued these issues for him would represent some level of distinction from the common impacts associated with severing community ties upon relocation, and the AAO will consider this fact when aggregating impacts due to relocation.

When the hardships upon relocation are examined in the aggregate, the AAO finds that they rise above the common impacts of relocation to a degree of extreme hardship. As the applicant has established that a qualifying relative would experience extreme hardship both upon relocation and separation, 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 unlawful presence and misrepresentation. The favorable factors in this case include the presence of the applicant's spouse, the hardship her spouse would experience due to the violent conditions in his native Mexican state upon relocation, and the lack of any criminal record while residing in the United States. Although the applicant's unlawful presence and misrepresentation are serious matters, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The director's decision will 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.