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

U.S. Citizenship and Immigration Services

DATE: MAR 20 2013 Office: CIUDAD JUAREZ (ANAHEIM) 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 waiver application was denied by the Field Office Director, Ciudad Juarez (Anaheim, California), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a 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 admission within 10 years of his last departure. The applicant is the spouse of a U.S. citizen. He seeks a waiver under 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 spouse.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision,* dated April 30, 2012.

On appeal, the applicant's spouse reiterates her hardship factors and submits new evidence for consideration. *See Petitioner's Affidavit attached to Form I-290B, Notice of Appeal or Motion,* dated May 25, 2012.

The evidence of record includes, but is not limited to: statements from the applicant's spouse, their family, and friends; psychological evaluations of the applicant's spouse; medical documents for the applicant's spouse and mother-in-law; financial documents; family photographs; copies of relationship and identification documents; and documents and newspaper articles in Spanish.

8 C.F.R. § 103.2(b) states:

> (3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As such, the Spanish-language documents without English translations cannot be considered in analyzing this case. However, the rest of the record was reviewed and all relevant evidence was considered in reaching a decision on the appeal.

Section 212(a)(9) states in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) 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.

(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.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

The record reflects that the applicant entered the United States in April 2001 without inspection and remained in the United States until February 2011, when he voluntarily departed. At the time of his entry into the United States, the applicant was 16 years old. He became 18 years old on August 22, 2002. The AAO finds that the applicant was unlawfully present from August 23, 2002, until his departure in February 2011. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his 2011 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility.

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 other family members can be considered only insofar as it results in hardship to a qualifying relative. 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,* 21 I&N Dec. 296, 301 (BIA 1996). In the instant case, the applicant's spouse is his qualifying relative.

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, 631-32 (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, "[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.*, *In re 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, the applicant's spouse states that being separated from the applicant causes her both financial and emotional hardship. The record demonstrates that the applicant was gainfully employed while he was in the United States, earning about $720 weekly. The applicant's spouse is unemployed. The applicant is unemployed in Mexico and he lives with his family; his father supports him financially. The record also contains evidence that his spouse sends him money occasionally. The applicant's spouse states that she has depleted her savings, and her claim is corroborated by evidence showing that their bank accounts have low balances. She sold her vehicle because of her inability to make monthly payments and has shut off the utilities to their trailer because she can no longer afford her expenses without the applicant's income. She now lives with her parents and depends on them financially.

The applicant's spouse states that being separated from the applicant also has been emotionally difficult for her. She sought medical treatment because she feared she was losing her hair on account of her stress caused by the applicant's immigration circumstances. She also was prescribed medication for her depression, but she stopped taking it because she cannot afford it. According to , a clinical psychologist, the applicant's spouse's symptoms include difficulty sleeping, crying spells, social isolation, difficulty initiating activities, and weight loss. states that the applicant's spouse fears being alone and worries about the applicant's safety in Mexico. The applicant's spouse also is worried about her inability to conceive. her psychiatrist, categorizes the applicant's spouse's depression as moderate to severe. Dr. Earwood considers her treatment "medically necessary," and he concludes that the applicant's spouse "would not be depressed if [she] reunited with her husband."

The applicant's spouse raises safety concerns about living in Mexico because of violence in San Luis Potosi, where the applicant lives. In addition to safety concerns, she worries about the substandard living conditions in the applicant's parent's house in Mexico, where the applicant lives, sharing a room with four sisters. The family home lacks potable water, utilities, and plumbing. Moreover, the applicant's spouse has no family there other than the applicant. The idea of moving to Mexico "increases her insecurity and anxiety, and is making [her] depression worse."

Letters from their family and friends corroborate the applicant's spouse's claims of financial and emotional hardships. They describe seeing the applicant's spouse's day-to-day struggles and refer to her financial dependence on her parents after the applicant's departure.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse is experiencing extreme hardship resulting from her separation from the applicant. In reaching this conclusion, we note the cumulative effect of the applicant's spouse's emotional and financial hardships. The record demonstrates that stress caused by their separation, coupled with the applicant's spouse's concerns about the applicant's safety in Mexico and the stress associated with her inability to conceive, have negatively affected her mental health. She fears living alone and cannot afford to do so. The applicant's spouse is unemployed and depleted her savings. She now financially depends on her parents for housing and other expenses. Moreover, she is unable to comply with her psychological treatment because she cannot afford her medication. The AAO concludes that, considering the evidence in the aggregate, the applicant's spouse is experiencing extreme hardship resulting from her separation from the applicant.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Mexico. The AAO notes that the applicant's spouse's safety concerns in Mexico are corroborated by the U.S. Department of State in its most recent travel warning for Mexico, updated on November 20, 2012. According to that report, roadblocks by transnational criminal organizations in various parts of Mexico in which both local and expatriate communities have been victimized have increased. The report mentions particular concerns for the state of San Luis Potosi, where the applicant lives, because cartel violence and highway lawlessness are a continuing security concern in that region. The report recommends that non-essential travel to the state of San Luis Potosi be deferred. Moreover, moving to Mexico would subject her to live in substandard conditions. She also would be deprived of her family's emotional and financial support. The AAO concludes that, considering the evidence in the aggregate, the applicant's spouse would experience extreme hardship should she relocate to Mexico to be with the applicant.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied. The applicant has established statutory eligibility for a waiver of his inadmissibility under section 212(a)(9)(v) of the Act.

In that the applicant has established that the bar to his admission would result in extreme hardship to his qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 . . . 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, 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 adverse factors in the present case are the applicant's entry without inspection, his unlawful presence in the United States, and his unauthorized employment. The mitigating factors include the applicant's U.S. citizen spouse, the extreme hardship to his spouse if the waiver application is denied, his lack of a criminal record, and statements from his family and friends attesting to his good character.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted.

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 remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec.

620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.