U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: OCT 0 2 2013 Office: CIUDAD JUAREZ, MEXICO FILE [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Ciudad Juarez, Mexico, denied the waiver application and 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 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 again seeking admission within 10 years of her last departure from the United States. The record reflects that the applicant entered the United States without inspection in June 2001 and remained until departing in July 2012. The applicant is the spouse of a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated April 10, 2013.

On appeal counsel for the applicant asserts in the Notice of Appeal (Form I-290B) that USCIS erred in failing to consider the psychological evaluation of the spouse or evidence that his earnings are insufficient to meet expenses, and in not evaluating the effect on the spouse of hardship to his children. With the appeal counsel submits a brief; affidavits from the applicant, her spouse, and the spouse's family members; psychological evaluations of the applicant's spouse; medical documentation for the spouse, his mother, and his step-father; and financial documentation. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, 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.

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. 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. *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.

In his brief counsel describes the findings in psychological evaluations of the applicant's spouse that he is suffering from severe depression and states that it has worsened. Counsel states that the applicant's oldest daughter is living with the spouse because she could not cope with living in Mexico and is now experiencing severe adjustment problems without her mother and younger sister, who are still in Mexico. Counsel states that the spouse has no family in Mexico but has family in the United States, including two sisters, his mother and step-father, who are U.S. citizens with whom he has close emotional ties. Counsel states that the spouse's mother, who lives with the applicant's spouse, suffers from medical problems for which she needs medication and care, and depends on the applicant's spouse for emotional and financial support. Counsel states that the step-father, who is also living with the applicant's spouse, is disabled from a work-related injury, has other medical problems, and needs financial and physical help from the applicant's spouse. Counsel states that one of the spouse's sisters is a single mother of three minor children who needs emotional and financial help from the applicant's spouse, while another sister lives with the spouse and needs his emotional guidance and financial support. Counsel asserts that the applicant could assist the spouse with family challenges and responsibilities to reduce hardship.

In his affidavit the applicant's spouse states that he depends on the applicant for emotional support, he suffers anxiety and depression for which he takes medication, and he has thoughts of suicide. The spouse states that his mother has medical problems and that he helps with her mortgage and daily living expenses. He states that his step-father is disabled due to a back injury and has other medical problems for which he needs assistance and that he sometimes takes his step-father to medical appointments. The spouse states that one sister needs emotional and financial support and that he helps support her children, providing money for groceries and clothing. He states that another sister studies so is unable to help with their parents, but that she needs his guidance and financial support. The spouse states that due to a shoulder injury he was unable to work for three months, causing living expenses and debts to rise, and that he is now working again but takes pain medication. He states that he constantly worries about his family members' health care and he needs the applicant's help caring for them and her emotional support so he can continue providing

economic support to family. He states that he could not live in Mexico without the emotional support of his parents and sisters and that they could not afford to visit if he were there. The spouse states that he is concerned about crime, the poor economy, and unhealthy conditions in Mexico. He states that he believes he could not find employment there, and if he did it would be insufficient to provide for his family.

A psychiatric evaluation states that the applicant's spouse shows excessive worry, lack of enjoyment, and isolation. It further states that the spouse suffers from exhaustion, sleep problems, obsessive thought, and memory problems, while feeling anxious at work and wanting to go home. The evaluation states that the applicant's spouse has never lived in Mexico and has no support there, and he would have difficulty finding work to support his family, would be exposed to dangers like crime, and would see a grim future for his children because of a lack of education. The evaluation states that the spouse suffers from panic attacks that without medical care could lead to a severe mood disorder. It states that while separated from the applicant, her spouse cannot afford to support two households or medical care for the applicant in Mexico, adding to his stress and worry about the applicant's safety. The evaluator noted a concern that the applicant's spouse would be unable to withstand the consequences of separation and that his profile shows his emotional stability to be fragile. It describes the spouse as anxious, depressed, and hopeless, and that the situation could lead to suicidal ideation. A follow-up evaluation states that the spouse's depression had elevated to where he was experiencing debilitating panic attacks, that his physician added two psychotropic medications to one already prescribed, and the spouse was having difficulty performing simple tasks and was confused, isolated, and overwhelmed. The evaluation states that the spouse reports working long hours and being unable to be with his daughter. It states that the spouse feels overwhelmed by financial problems and worries about being unable to sustain the family and pay for medical care. Affidavits from the spouse's sisters and mother state how he provides emotional and financial support to them.

The record shows that the spouse is providing emotional and financial support for several family members while caring for his own child, who he believes is suffering due to separation from the applicant. Two psychiatric evaluations indicate the applicant is suffering from severe depression and anxiety without the applicant's support, has been prescribed multiple medications, and could become suicidal.

The applicant's spouse's initial psychiatric evaluation states that the applicant had made up 35 percent of their income and that the spouse supports her in Mexico. The second evaluation states that the applicant's spouse reported borrowing money to pay bills and support the applicant and their child in Mexico, and was missing work due to anxiety and exhaustion. Affidavits from family members state that he provides for them financially, and the spouse reported during his psychiatric evaluation that he provides for the applicant in Mexico. The AAO finds the record to establish that the applicant's spouse is experiencing extreme hardship resulting from his separation from the applicant. In reaching this conclusion, the AAO notes the spouse's emotional condition and his financial status.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Mexico to reside with the applicant. The record establishes that the applicant's spouse was born in the United States and has no ties to Mexico. He would have to leave his family, most notably his parents and siblings with whom he has close emotional ties, and his employment, and he would be concerned about safety as well as financial well-being in light of the lack of employment opportunities in Mexico. Further, the record reflects that the applicant resides in Zacatecas, where the U.S. Department of State recommends against non-essential travel for much of the state and to exercise caution in the interior of the state including the city of Zacatecas. *U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Mexico,* 7/12/2013.

It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate Mexico to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the circumstances presented in this application rise to the level of extreme hardship.

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 for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion 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 hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, the applicant's support from the qualifying spouse and his family in the United States, and her apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's accrual of unlawful presence in the United States.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

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.