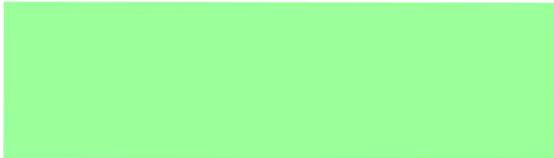


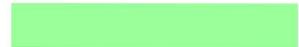


**U.S. Citizenship
and Immigration
Services**

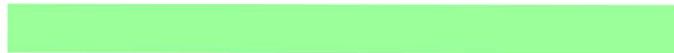
(b)(6)



Date: FEB 26 2014 Office: NEBRASKA SERVICE CENTER



IN RE:



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:

SELF-REPRESENTED

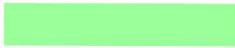
INSTRUCTIONS:

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,

A handwritten signature in cursive script that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office



DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 for one year or more and seeking readmission within 10 years of his last departure. The applicant was further found inadmissible under section 212(a)(9)(C)(i)(I)¹ of the Act, 8 U.S.C. §1182(a)(9)(C)(i)(I), for having accrued more than one year of unlawful presence and reentering the United States without being admitted. The applicant's spouse and two children are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside in the United States.

The Director found that because the applicant is inadmissible to the United States pursuant to section 212(a)(9)(C)(i) of the Act, and he is not eligible to request consent to reapply until he has been outside of the United States for ten years, the applicant would remain inadmissible even if the waiver were granted. He therefore denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), as a matter of discretion. *Decision of the Director*, dated August 20, 2013.

On appeal, the applicant asserts that he is entitled to a waiver under section 212(a)(9)(B)(v) of the Act. *Form I-290B, Notice of Appeal or Motion (Form I-290B)*, filed September 9, 2013.

The record includes, but is not limited to, the applicant's spouse's statement, financial records, medical letters for the applicant's spouse and children, and country conditions information about Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

....

¹ The Director refers to section 212(a)(9)(C)(i)(II) of the Act in his decision, but this appears to be a typographical error.

- (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).
 - (v) Waiver.—The Attorney General [now the Secretary 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.

The record reflects that applicant entered the United States without inspection in April 1997, departed the United States in May 1998, re-entered the United States without inspection in March 1999 and departed the United States in July 2011. The applicant turned 18 years-old on August 21, 1999. Therefore, the applicant accrued unlawful presence from August 21, 1999, the date he turned 18 years-old, until July 2011, when he departed the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of his July 2011 departure from the United States. The applicant does not contest this ground of inadmissibility.

Section 212(a)(9)(C)(i) of the Act states, in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.—

(i) In general.—Any alien who—

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien’s last departure from the United States if . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien’s reapplying for admission....

As mentioned, the applicant accrued unlawful presence from August 21, 1999 until July 2011. His period of unauthorized stay from April 1997 until May 1998 is not considered unlawful presence as he was less than 18 years of age. His entry without being admitted in March 1999 was not subsequent to a period of one year or more of unlawful presence. Therefore, the applicant is not inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(I) of the Act.

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 his children can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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).

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 AAO will first address hardship to the applicant’s spouse if she relocates to Mexico. The applicant’s spouse states that a drug cartel has taken over her and the applicant’s home town in El ██████████ employment opportunities are nonexistent due to the cartel drug wars; the local labor force is forced to provide protection fees; several individuals with families in the United States have been kidnapped and murdered; and it would be impossible for their daughters to adjust to the lack of medical services, education services and the threat of violence.

The applicant’s spouse cites to a 2012 U.S. Department of State Travel Warning for Mexico that details safety issues in Mexico, and in particular the state of ██████████ The January 9, 2014 travel states in particular:

The state of ██████████ was the most violent state in Mexico through the first 10 months of 2013, with 1,718 homicides and 205 reported cases of kidnapping, according to the Mexican Secretariado Ejecutivo Nacional de Seguridad Publica. Self-defense groups operate independently of the government in many areas of ██████████ Armed members of these groups frequently maintain roadblocks, and although not considered hostile to foreigners or tourists, are suspicious of outsiders and should be considered volatile and unpredictable.

The record also includes evidence of the family’s medical conditions. The applicant’s spouse’s physician states that she has a history of hypothyroidism. A physician states that the applicant’s older daughter was diagnosed with asthma and his younger daughter was diagnosed with acute bronchitis. The record reflects that the applicant’s older daughter is receiving care for asthma.

The record reflects that the applicant’s spouse would be relocating to Mexico with their two children, ages eight and five. They would be relocating to an area with serious, documented safety

issues. The applicant's spouse also has a medical issue requiring treatment. In addition, the two children have medical issues, and the applicant's spouse would experience emotional hardship related to her concern about the lack of reliable medical services available to them in Mexico. The applicant's spouse is also concerned about the lack of education opportunities for their children. Based on the totality of the hardship factors presented, the AAO finds that the applicant's spouse would experience extreme hardship if she relocated to Mexico.

Concerning the hardship she would experience if she remained in the United States, the applicant's spouse states that the applicant worked as a machinist; their household income was \$37,488 before his departure; the household income now is under \$17,000; the applicant's employment opportunities in their hometown of [REDACTED] are nonexistent due to the drug cartel wars; and she would have to raise their daughters alone, which would affect her income.

The applicant's spouse's 2011 federal tax return reflects her income of \$16,621. The applicant and his spouse's 2009 federal tax return reflects their combined income of \$37,488. The record includes a list of the applicant's spouse's expenses, although it does not include supporting documentary evidence of these expenses,

The applicant's spouse states that it would be impossible for the applicant to remain in Mexico and survive. The record includes a report addressing safety issues in [REDACTED]. Moreover, the applicant's spouse states that she suffers from hypothyroidism, stress and clinical depression; their older daughter has been diagnosed with major depressive disorder and anxiety; their younger daughter has asthma and has been diagnosed with adjustment disorder with depressed mood; and the applicant, as the sole caregiver for her and their children, maintains their medications and transports them to and from doctors' visits.

The applicant's spouse's physician states that she has a history of hypothyroidism; she recently became the sole caretaker of their two daughters; she is experiencing a great deal of stress without the applicant; she has symptoms of clinical depression; she would benefit medically if the applicant could return to the United States; and she will need regular medical visits and lab work to follow her chronic medical problems closely.

The record also includes evidence of the applicant's children's medical and psychological conditions. His older daughter's physician states that she has been diagnosed with major depressive disorder, single episode, moderate degree, and anxiety; she is not currently taking any medication; and she has been referred to a therapist. She also was diagnosed with asthma and is receiving care for asthma. The applicant's younger daughter's physician states that she has been diagnosed with adjustment disorder with depressed mood; she is not currently taking any medication; and she has been referred to a therapist. Additionally, the applicant's younger daughter was diagnosed with acute bronchitis.

The record reflects that the applicant's spouse would be raising two children on her own, both of whom have psychological and medical issues, which would cause her emotional hardship. The applicant's spouse would experience emotional hardship without the applicant. She has concerns, supported by the record, that the applicant faces serious safety issues in [REDACTED]. In addition, she

would experience significant financial hardship without the applicant, as he provided a significant part of the family income. Based on the totality of the hardship factors presented, the AAO finds that the applicant's spouse would experience extreme hardship if she remained in the United States without the applicant.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied.

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.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez 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 (citation omitted).

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 section 212(h)(1)(B) 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 include the applicant's U.S. citizen spouse and children, extreme hardship to his spouse, hardship to their children, the lack of a criminal record and the filing of tax returns. The unfavorable factors include the applicant's periods of unauthorized stay and unauthorized employment and his entry without inspection.

The AAO finds that the favorable factors in the present case outweigh the adverse factors, such 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.