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

(b)(6)

DATE: APR 04 2013 Office: CIUDAD JUAREZ File:

IN RE: Applicant:

APPLICATIONS: 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. § 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, Mexico, and 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 first entered the United States without inspection in July 2004 and departed to Mexico on March 12, 2011, having accrued unlawful presence from April 10, 2008, his 18th birthday, until his departure. When the applicant sought to immigrate as the beneficiary of an approved Petition for Alien Relative (Form I-130), he 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 in the United States for one year or more. He is seeking a waiver of inadmissibility in order to live in the United States.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director,* July 20, 2012.

On appeal, counsel for the applicant contends that the denial decision erred in overlooking the extreme hardships that the applicant's father is suffering, and will continue to suffer, as a result of his son's inadmissibility. In support of the appeal, counsel submits additional evidence, including, but not limited to: a marriage certificate, green card, and birth certificates; hardship statements from the applicant and qualifying relative; other support statements; remittances, receipts for rent and utilities, and other financial records; a psychological evaluation, urgent care notes, and details of medical prescriptions; educational and career information; photographs; and a travel warning. The entire record was reviewed and 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.
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> (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 Attorney General (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…

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawfully resident father 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's father contends he will continue to suffer physical, emotional, and financial hardship if the applicant is unable to reside in the United States. The emotional hardship claim focuses on the qualifying relative's assertion that he suffers from anxiety and depression due to separation from the applicant, who was the only one of four family members whose waiver application was denied in 2012.[1] The record reflects that within months of his family's March 2011 departure to consular process, the doctor for the applicant's father began prescribing several antidepressant medications and sleep aides. Based on worsening symptoms including insomnia, fatigue, inability to concentrate, headaches, heart palpitations, constant crying, inattention to personal hygiene, loss of appetite, significant weight loss, and suicidal ideation, a clinical psychologist diagnoses him with severe depression. *Psychological Evaluation,* August 4, 2012. The psychologist concludes that, as the applicant's father's depression and anxiety have increased, he meets the diagnostic criteria for a major depressive episode and is potentially at risk to harm himself.

The applicant's father reports feeling burdened by concerns about his family members who remain barred from immigrating.[2] Due to narco-related violence in Mexico, he is worried about his son's safety and about becoming a victim himself if he visits. Official U.S. government reporting bears out the safety concerns by establishing that criminal activity has resulted in advisories to defer non-essential travel in many parts of Mexico. A lawful permanent U.S. resident since 1990, he does not feel safe traveling to see his son to lessen the feelings of loss due to separation.

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[1] The record reflects that the applicant has five siblings, three of whom incurred no unlawful presence due to their minority. The remaining two siblings, one older and one younger than the applicant, were granted waivers on November 30, 2012, while his mother (the qualifying relative's wife) received her waiver on November 16, 2012. As these waivers are not at issue and the Forms I-601 not part of the record, the AAO is unable to verify counsel's contention that the applicant's case is extremely similar to his brothers' waiver cases.

[2] His statement predates by three months the three waiver approvals of his family members.

Regarding financial hardship caused by separation, the record reflects that the applicant's father has many ongoing expenses to support a family of eight, including $500 monthly rent and utilities here, on an annual income of $33,000. Documentation shows that he also supports the applicant (and possibly other family members still awaiting their immigrant visas) through regular remittances to Mexico. There is evidence to support the claim that the applicant contributed amounts ranging from $600 to over $1,000 monthly toward household expenses by working odd jobs since high school. The AAO notes that the qualifying relative's income barely exceeds the 2013 federal poverty guideline for a family of six and falls several thousand dollars below the guideline for his family of eight.[3] The record contains substantial evidence that maintaining two households represents a significant burden for the qualifying relative, particularly without the applicant's contribution.

For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's father is experiencing due to his son's inadmissibility rises to the level of extreme. We are sensitive that, despite the immigration eligibility resulting from the waivers granted to three of his family members, the qualifying relative's concerns about the single child left behind will persist until his family is reunited in the United States. The AAO concludes based on the evidence provided that, were the applicant's father to remain in the United States without the applicant due to his inadmissibility, he would suffer extreme hardship beyond those problems normally associated with family separation.

The qualifying relative contends that he would experience hardship if he relocated abroad to reside with the applicant. Regarding ties to the United States, documentation establishes that the applicant's father and his family have roots in their community. The record shows that, after the applicant's father had been a permanent resident for nearly 14 years, his family joined him in the United States, when his three younger children were five, seven, and ten years old. They received all or substantially all of their education here, and the family is active in the local church. Permanently relocating to Mexico would involve possible forfeiture of permanent residency for the applicant's family members. The evidence suggests that forsaking his job to move back to Mexico would entail loss of the employer-provided, health and life insurance benefits his family currently enjoys. The record reflects that he attended school only until the fifth grade in Mexico, is minimally able to read and write Spanish, and unable to speak English. It also supports his claim that the family functions as a unit in which the children's ability to speak English compensates for their parents' inability to speak English. Evidence likewise supports his contention that he would be unable to support his family in the jobs available to him in Mexico. He expresses worry about their opportunities for health, safety, and education in his home country due to the lack of U.S. standard healthcare and the current violence there.

The qualifying relative's claims to fear for his family's safety in Mexico due to ongoing violence are supported by official U.S. government reporting:

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[3] The relevant 2013 federal poverty guidelines are: $31,590 (for a family of six), $35,610 (family of seven), and $39,630 (family of eight).

> **CRIME:** Crime in Mexico continues to occur at a high rate and can often be violent. Street crime, ranging from pick pocketing to armed robbery, is a serious problem in most major cities. Carjackings are also common, particularly in certain areas (see the Travel Warning for Mexico). The homicide rates in parts of Mexico have risen sharply in recent years, driven largely by violence associated with transnational criminal organizations.

Mexico—Country Specific Information, U.S. Department of State (DOS), February 15, 2013.

The U.S. Embassy site has published a series of warnings regarding current threats, most recently in November 2012, advising U.S. citizens against non-essential travel to many parts of Mexico. *See Travel Warning—Mexico,* DOS, November 20, 2012.

The qualifying relative's concerns regarding personal safety are thus substantiated by the record and by government guidance on the country. Based on a totality of the circumstances, the AAO concludes the applicant has established that his father would suffer extreme hardship were he and his family to relocate abroad to reside with the applicant.

Review of the documentation on record, when considered in its totality, reflects the applicant has established a qualifying relative would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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 favorable factors in this matter are the extreme hardships the applicant's father and dependent family members would face if the applicant were to reside in Mexico, regardless of whether they accompanied the applicant or remained here; the applicant's lack of any criminal record; supportive statements; passage of nearly nine years since the applicant's mother brought him to this country as a 13 year-old; and his history of working to assist his family financially. The only unfavorable factor in this matter is the applicant's accrual of unlawful presence.

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 thus finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is granted.