U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: FEB 05 2013 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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:

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.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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. lawful permanent resident. The applicant seeks a waiver of inadmissibility 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 U.S. lawful permanent resident wife.

The field office director concluded that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the applicant's spouse asserts that the director erred in finding that the applicant has not established extreme hardship to his qualifying relative. The applicant's spouse contends that the evidence outlining psychological and emotional difficulties demonstrates extreme hardship to the applicant's qualifying relative.

The record includes, but is not limited to: a statement from the applicant's wife; a medical letter concerning the applicant's wife; a medical report; police clearance letters; a letter from the applicant's pastor; pay stubs; and utility bills and other financial documents.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

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

The record shows that the applicant entered the United States without inspection in September 1996, and remained in the United States until December 2010, when the applicant departed the United States to attend an immigrant visa interview at the U.S. Consulate in Ciudad Juarez, Mexico. The AAO finds that the applicant thus accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions, until his departure in December 2010. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his 2010 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 on appeal.

Section 212(a)(9)(B)(v) of the Act provides that:

> Waiver.-The Attorney General [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 to the satisfaction of the Attorney General [Secretary of Homeland Security] 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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary of Homeland Security] regarding a waiver under this clause.

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-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996). Here, the record reflects that the applicant is married to a U.S. lawful permanent resident. The applicant's spouse therefore meets the definition of a 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 of Immigration Appeals (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 the 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 is 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 issue of whether the applicant has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

The asserted hardship factors to the qualifying relative are the emotional, financial, and psychological hardships the applicant's wife would experience in the event of separation. In her affidavit dated October 22, 2011, the applicant's wife asserts that she is experiencing anxiety and stress from the separation, which have caused her mood swings, sleep deprivation, and nutrition problems. The applicant's wife also states that she constantly worries about the safety of the applicant, as he currently lives in Michoacán, Mexico, a state she describes as unsafe due to drug-related violence. She asserts that separation from the applicant, together with the dangerous living conditions in Mexico, are the main reasons she was recently diagnosed with depression. The applicant's wife further states that she is extremely exhausted both physically and psychologically.

The record includes a letter by Dr. , in which she states that the applicant's wife has been diagnosed with depression. In her letter, dated October 12, 2011, Dr. attributes this diagnosis to separation from the applicant due to his immigration situation. The letter does not detail the severity of the applicant's wife's condition. However, the record also includes a medical report prepared at the in Texas. In the report, dated April 13, 2011, it is noted that the applicant showed symptoms of weight loss, tearfulness, loss in appetite, and insomnia. The medical report reflects that after physical and psychological evaluations, the applicant's wife was diagnosed with depression. This report, together with Dr. letter, corroborates the applicant's wife's assertions that she began experiencing psychological difficulties and depression around the time the applicant returned to Mexico to pursue his application for an immigrant visa.

With regards to financial hardship, the applicant's spouse states the family's financial stability has decreased as a consequence of separation. She states that the applicant financially contributed to the household when he lived with her in the United States. The applicant's wife states that because of the separation, the applicant no longer contributes to the household. Consequently, she has reduced all extra spending and is currently utilizing her income solely to meet their monthly obligations. The applicant's wife further asserts that she sends remittances totaling $250 to the applicant, who currently resides in Mexico. The applicant's wife indicates that their current financial situation worries her, resulting in lack of concentration during work and in sleep disorders. From the financial documentation submitted on appeal by the applicant's wife, it is noted that her average monthly gross pay is $1,824. The record evidence further indicates that the applicant pays monthly mortgage payments of $828.36 and pays an average of $173 each month on utility bills. Additionally, the applicant's wife asserts that she sends her husband remittances totaling $250 a month. Taken together, the record indicates that the applicant's wife has fixed monthly obligations of at least $1,251. From the documents provided, the AAO acknowledges that the applicant's wife currently faces economic difficulties as she is the sole provider for her household.

In regard to emotional difficulties and dangerous living conditions in Mexico, the applicant's wife states that the crime and violence currently being experienced in certain parts of Mexico makes living in those areas unsafe. She further asserts that she is "very scared for her husband," as he may fall victim to a kidnapping or other crimes while living in Michoacán, Mexico. The AAO notes that on November 20, 2012, the United States Department of State updated its Travel Warning for United States citizens traveling to Mexico. The Travel Warning notes that since 2006, the Mexican government has engaged in an extensive effort to combat transnational criminal organizations (TCOs). The TCOs, meanwhile, have been engaged in a struggle to control drug trafficking routes and other criminal activity. Bystanders, including U.S. citizens, have been injured or killed in violent incidents in various parts of the country, especially, though not exclusively in the northern border region, demonstrating the heightened risk of violence throughout Mexico. The Travel Warning indicates that during some of these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area.

The Travel Warning further indicates that TCOs, meanwhile, engage in a wide-range of criminal activities that can directly impact United States citizens, including kidnapping, armed car-jacking, and extortion that can directly impact United States citizens. According to the Travel Warning, the number of U.S. citizens reported to the Department of State as murdered under all circumstances in Mexico was 113 in 2011 and 32 in the first six months of 2012. Regarding the state of Michoacán,

the Travel Warning indicates that U.S. citizens "should defer non-essential travel to the state of Michoacán," as attacks on Mexican government officials, law enforcement and military personnel, and other incidents of TCO-related violence, have occurred throughout the state. Based on the increased violence in Mexico and the Travel Warning issued to U.S. citizens, the AAO notes the risks U.S. citizens face when traveling to certain areas in Mexico, including the area where the applicant currently resides. Therefore, the ability of the applicant's wife to visit the applicant in Michoacán, Mexico is limited. Additionally, the AAO notes that the applicant's wife's assertions regarding the unsafe conditions in the area where the applicant resides, and the emotional and psychological difficulties these unsafe conditions have caused her are corroborated by the information contained in the Travel Warning.

Accordingly, when looking at the aforementioned factors in the aggregate, particularly the documented financial difficulties of the applicant's wife, the applicant's wife's depression and the observed mood swings she experiences due to the separation, as well as the risks of travel to Mexico as documented by the Travel Warning, the AAO finds that the applicant has demonstrated extreme hardship to his wife if she were to remain in the United States.

With regard to relocation to Mexico, the AAO notes that the applicant's wife has been residing in the United States for many years and that the record does not indicate whether she has family members residing in Mexico. The AAO further notes that the applicant's wife may experience hardship in relocating to Michoacán, Mexico. The applicant's wife states that life in the area where the applicant currently resides is unsafe, as individuals who are not from Michoacán, Mexico are being kidnapped for ransom demands. She asserts that drug-related violence has led to shootings and murders in the area. As previously noted, the United States Department of States has issued a Travel Warning advising of the risks of travel to Mexico. Regarding the specific area where she would be residing in Mexico in the event of relocation, the Travel Warning indicates that U.S. citizens "should defer non-essential travel to the state of Michoacán," as attacks on Mexican government officials, law enforcement and military personnel, and other incidents of TCO-related violence, have occurred throughout the state. Relocation to Mexico would thus require the applicant abandon her residence in the United States to move to a part of Mexico that has become unstable and unsafe due to drug-related violence. Additionally, relocation would exacerbate the applicant's wife's psychological difficulties, as the concern and nervousness regarding their well-being and safety would likely increase. When looking at the aforementioned factors in the aggregate, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Mexico.

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.

The favorable factors in this matter are the extreme hardship the applicant's wife would face if the applicant were to reside in Mexico, regardless of whether she accompanied the applicant or stayed in the United States; the applicant's community ties, including his involvement with the [redacted] in [redacted], Texas; and the applicant's apparent lack of a criminal record, as evidenced by several police clearance letters. The unfavorable factors in this matter are the applicant's periods of unlawful presence and unlawful employment while in the United States.

It is noted that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary of Homeland Security's discretion is warranted

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(h) 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.