U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: JUL 15 2013 OFFICE: PHOENIX, ARIZONA File: [redacted]

IN RE: Applicant: [redacted]

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:

[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
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Phoenix, Arizona, 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 seeking readmission within ten years of her last departure from the United States. The record indicates that the applicant is married to a U.S. citizen. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to 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 her spouse and children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Field Office Director,* dated January 4, 2012.

On appeal counsel contends that if the waiver is not granted, the applicant's spouse will suffer extreme hardship. *See Form I-290B, Notice of Appeal or Motion*, received February 6, 2012 (Form I-290B).

The record contains, but is not limited to: Form I-290B; counsel's appeal memorandum; various immigration applications and petitions; hardship letters; letters of character reference and support; a medical-related letter; employment, tax and financial records; and marriage, birth and divorce records. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act 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.

The record reflects that the applicant was admitted to the United States on April 1, 2009 as a B-2 nonimmigrant with an authorized stay not to exceed May 1, 2009. The applicant overstayed her temporary visa, departing the United States on May 8, 2010. On July 21, 2010, the applicant entered the United States as a B-2 visitor authorized to stay until August 20, 2010. The applicant has remained in the United States since July 2010. The applicant thus has accrued over one year

of unlawful presence during a single period of stay in the United States. As the applicant is seeking admission within 10 years of her departure, she was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(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 can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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).

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 applicant's spouse is a 51-year-old native of El Salvador and citizen of the United States. While he and the applicant have no biological children together, they have five adult children from their prior marriages, and the applicant's youngest child, age 18, resides with them. The applicant's spouse states that he shares everything with the applicant, including financial responsibilities, and the loss of her income would economically devastate him. The record shows that the applicant's spouse earns $11.02 per hour through his employment with [redacted] A written budget asserts that the applicant earns approximately $1,400 per month and the applicant's spouse approximately $1,763 for a combined total monthly income of $3,203. The budget and supporting financial documents indicate that the couple's monthly expenses total approximately $2,878. The applicant's spouse explains that he would be unable to meet his family's current financial obligations in the United States and also support the applicant in Mexico on his salary alone, an assertion corroborated by the evidence submitted.

The applicant's spouse indicates that separation would cause him not only economic hardship, but extreme physical and emotional hardship as well. [redacted] writes that the applicant's spouse suffers from diabetes, hypertension, allergies, and arthritic joint pain, conditions he is treating with prescription medications and follow-up care. [redacted] states that separation from the applicant "has caused tremendous stress" and is detrimental to the applicant's spouse's health. The applicant's spouse states that his mental and physical health would be greatly affected by the applicant being barred from the United States. He explains that since learning that the applicant's waiver application was denied, he has experienced anxiety attacks, stress, and insomnia. The applicant's spouse expresses fear for the applicant's safety in Mexico, where violent crime is rampant. He asserts that drug cartels and hit men have taken over her hometown, and her former husband, who after abusing her and being convicted on weapons

charges was deported to Mexico, continues to threaten to kill them both. The applicant's spouse indicates that threatened him and the applicant with a gun after beating the applicant and trying to force himself on her sexually. The applicant's spouse helped the applicant obtain a restraining order against who, after being deported to Mexico, contacted him telephonically and threatened to kill him. The record includes corroborating evidence from the Superior Court of Maricopa County, Arizona, concerning the applicant's former husband's conviction. Moreover, the applicant's spouse explains that he does not earn enough money to secure an apartment near the U.S. border for the applicant, and thus the only place in Mexico she can live is with her family in Hermosillo, Sonora, where her ex-husband resides and sells drugs. The applicant's spouse writes that thinks the applicant belongs to him and will try to take her back by force. He indicates that the applicant's fear of harm at the hands of her former husband and his own fear for her safety has and will continue to have damaging effects on his mental, emotional and physical health.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including the economic impact of separation; the medical impact on his health; and the significant emotional impact given the violent history of the applicant's former husband, who has abused her and threatened to kill them both and now resides in the same area as the applicant. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

Addressing the hardship he would experience upon relocation, the applicant's spouse, a native of El Salvador and citizen of the United States, states that he would be unable to secure comparable employment in Mexico, and relocation would result in the loss of his steady employment in the United States as well as his employer-provided medical benefits, 401(k) retirement plan, and various other employment-related benefits. The applicant's spouse explains that the financial impact of relocation to Mexico would prevent him from seeing his "close knit" family in the United States, particularly his children and grandchildren. Additionally, his credit rating would be damaged and he could not fulfill his dream of purchasing a home. The applicant's spouse fears that Mexico's health care system and the availability and quality of medical care would be significantly lower than what he enjoys in the United States. He expresses concern for his own safety and that of the applicant in Sonora, Mexico, where the man who threatened to kill them resides and violent crime generally has increased. According to the U.S. State Department's current *Mexico Travel Warning*, dated November 20, 2012, U.S. citizens are warned that crime and violence are serious problems throughout Mexico and can occur anywhere. U.S. citizens have fallen victim to transnational criminal organization activity including homicide, gun battles, kidnapping, carjacking and highway robbery, and the number of kidnappings and disappearances throughout Mexico is of particular concern. The State Department specifically warns that Sonora is a key region in the international drug and human trafficking trades and can be extremely dangerous.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including his lengthy period of residence in the United States and lack of ties to Mexico, other than to the applicant; his close family ties in the United States, particularly to his

children, grandchildren, and the applicant's children, the youngest of whom resides with him; the loss of his employment in the United States and his employer-provided health insurance, retirement plan, and other benefits; his medical conditions, for which he is currently under the care of a physician in the United States and for which he takes prescription medications; his emotional condition with regard to his own safety and that of the applicant; and his stated safety, economic, and health concerns regarding Mexico. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Mexico to be with the applicant until she is no longer inadmissible to the United States.

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.

The favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the applicant's significant family and community ties to the United States as demonstrated by attestations by others to her good moral character and essential presence in the community; her employment and payment of taxes; and her apparent lack of any criminal record. The unfavorable factors are the applicant's immigration violations, which include twice staying beyond the period authorized by her visitor visa, her unlawful presence and her unauthorized employment in the United States. Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, pursuant to section 212(a)(9)(B)(v) of the Act, 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.