(b)(6)

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

DATE: JUL 2 3 2013 Office: ANAHEIM 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 (the 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 (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 International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico, denied the waiver application and the Administrative Appeals Office (AAO) rejected a subsequent appeal as untimely filed. The AAO will reopen the matter on its own motion and the underlying waiver application will be granted.

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 Act for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.

The International Adjudications Support Branch found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. The AAO rejected the appeal, finding that the appeal was untimely filed.

The applicant's wife now submits a letter as well as a copy of the Express Mail receipt to show the appeal was timely filed. The applicant's wife requests that the applicant's appeal be considered on the merits. The AAO finds the evidence to be persuasive and will reopen the matter on its own motion.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on July 19, 2008; a copy of the birth certificate of the couple's U.S. citizen son; letters from letters from parents; copies of tax returns; copies of photographs of the applicant and his family; an article addressing drug cartels in Mexico; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on appeal.

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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> . . . .
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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.

In this case, the record shows, and the applicant does not contest, that he entered the United States without inspection in September 2002 and remained unlawfully until September 2011. The applicant accrued nine years of unlawful presence. Therefore, the applicant 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 admission within ten years of his departure.

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.

After a careful review of the record, the AAO finds that the applicant's wife, has suffered and will continue to suffer extreme hardship if the applicant's waiver application were denied. The record shows that has two sons who are currently nine and four years old. The AAO recognizes her contentions that she is struggling with depression while trying to care for her children and that she does not have enough money to see a counselor to deal with her current and past psychological traumas, including the loss of her brother who was shot to death. In addition, the AAO acknowledges contentions that she has moved in with her father, that she sends her husband money in Mexico, and that she cannot afford anything. The record contains copies of tax documents showing that in 2011 and 2010, earned $15,789 and $21,713, respectively, in wages which the AAO recognizes is close to the poverty line. Letters from parents and son corroborate the contention that she moved in with her father and that her parents help her with housing and food because she cannot afford to live on her own. Her mother also describes struggle with depression and states that she is so depressed she asks them to help her with basic things, such as registering her children for school. The AAO recognizes the hardship has experienced as a single, working parent to two young children who can longer live independently. Considering the unique circumstances of this case, the AAO finds that if continues to stay in the United States without her husband, the effect of separation from the applicant goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Furthermore, relocating to Mexico to avoid separation would be an extreme hardship for The record shows that and her children were born in the United States and the AAO acknowledges her contention that they have never lived in Mexico. In addition, the record shows that both of parents live in the United States. Furthermore, the AAO recognizes contention that she fears Mexico is not a safe place and the AAO takes administrative notice that the U.S. Department of State has issued a Travel Warning for some parts of Mexico. *U.S. Department of State, Travel Warning, Mexico*, dated November 20, 2012. Considering these factors

cumulatively, the AAO finds that the hardship would experience if she relocated to Mexico to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Ms. Orta faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's unlawful entry into the United States, his unlawful presence in the United States, and periods of unauthorized employment. The favorable and mitigating factors in the present case include: significant family ties in the United States including his U.S. citizen wife, son, and step-son; the extreme hardship to the applicant's entire family if he were refused admission; the applicant's expression of remorse for violating the immigration laws of the United States; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, 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 motion will be granted and the underlying waiver application is approved.