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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAY 14 2013 Office: PHOENIX FILE: [redacted]

IN RE: Applicant: [redacted]

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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Phoenix, Arizona, 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 her last departure. The applicant is the spouse of a U.S. citizen. On October 14, 2011, she filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). 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 remain in the United States with her U.S. citizen husband and children.

In a decision dated February 9, 2012, the field office director concluded that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility and denied the Form I-601 application accordingly. The field office director further denied the waiver application in the exercise of discretion, finding that the applicant's immigration violations outweighed the positive factors of her case.

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

The record includes, but is not limited to: the applicant's appeal brief; an affidavit by the applicant's husband; the applicant's affidavit; income tax returns; pay stubs; a marriage certificate; character reference letters; a psychological evaluation; medical documentation; employment verification letters; utility bills; school attendance records; copies of mortgage payments and mortgage documentation; country conditions documentation; family photographs; and documentation concerning the applicant's disorderly conduct criminal conviction.

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 as a nonimmigrant visitor sometime in 1994 and remained in the United States beyond the authorized period of stay without permission. The applicant departed the United States to Mexico sometime in 2004. Subsequent to her departure, the applicant reentered the United States in 2006 using a border crossing card. 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 her departure in 2004. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of her 2004 departure, she is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility on appeal.

A discretionary waiver of 212(a)(9)(B)(i)(II) inadmissibility is available under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which 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. citizen. The applicant's husband 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 her inadmissibility.

The asserted hardship factors to the qualifying relative are the emotional, financial, and psychological hardships the applicant's husband would experience in the event of separation. In his affidavit dated October 4, 2011, the applicant's husband asserts that he would be devastated without the applicant's presence in the United States. The applicant's husband indicates that his employment as a farm technician requires him to work out of state from April thru September, and that the applicant takes care of their household and six children while he is away working. The applicant's husband asserts that his life would be destroyed if he separated from his wife, and that her immigration situation is causing him mental problems. The applicant's husband also states that he is worried about the safety of the applicant and their children if she relocates to Mexico and he remains in the United States.

The record includes a psychological evaluation of the applicant's husband prepared on October 4, 2011 by a Licensed Individual Counselor at Professional Counseling Services in Mesa, Arizona. states that as a result of the evaluation, the applicant's husband has been diagnosed with Major Depressive Disorder, Acute Stress Disorder, and Transient Tic Disorder. attributes this diagnosis to the prospect of separation from the applicant due to her immigration situation and the multiple issues in the household, including the fact that both the applicant and her husband have children from prior relationships residing with them in their household and the fact that the applicant's elderly parents also reside with them. The applicant's husband mentioned to that the applicant's parents' health is fragile and continues to deteriorate. For example, the applicant's father has been diagnosed with diabetes, hypertension, and receives dialysis three times a week. The applicant is responsible for driving him to medical appointments and the applicant's husband indicates that the prospect of separation is causing him stress. mentions that the applicant's husband was emotional through the assessment, exhibited several nervous tics, and has suicidal ideation. Further, the report indicates that the applicant's husband is experiencing insomnia, nightmares, and has difficulty concentrating. This report corroborates the applicant's husband's assertions that he is experiencing psychological difficulties and depression.

With regards to financial hardship, the applicant's spouse mentions that he is the sole provider for their household of at least eight. The record evidence reflects that the applicant's husband is employed full-time as a farm technician and that the applicant takes care of their household. The applicant's husband indicates that he would be unable to provide for two households in the event of separation.

The record includes supporting financial documentation establishing that the applicant's husband would experience financial difficulties in the event of separation. In a letter dated September 27, 2011, indicates that the applicant's husband has been working for since November 1997 and that he is paid on a weekly basis earning an hour. mentions that the applicant works in the company's maintenance department and that he does not have a fixed schedule so overtime hours vary. The record also includes letters of support, written by the applicant's family members and friends of the family, attesting to the emotional and financial difficulties the applicant's husband

would face in the event of separation. Additionally, the record includes tax records and pay stubs, which indicate that the applicant is the main provider for the family by earning $64,512 a year. The record evidence in support of the financial hardship assertions includes utility bills, bank records, and copies of the applicant's husband's mortgage payments. The documentary evidence submitted on motion reflects that, on average, the family's fixed monthly utility obligations total $2,071. Additional financial evidence includes monthly obligations on homeowners insurance, medical expenses, and other weekly expenses for a household of at least eight. From the documents provided, the AAO acknowledges that the applicant's husband would experience financial difficulties as a result of separation from the applicant if she is denied admission to the United States and the applicant had to provide for and maintain two households.

In regard to emotional difficulties and dangerous living conditions in Mexico, the applicant's husband states that the crime and violence currently being experienced in certain parts of Mexico makes living in those areas unsafe. He further states that he would be unable to sleep if the applicant had to return to Mexico, as he is afraid something bad could happen to her. 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 Sonora, the Travel Warning indicates that U.S. citizens "should defer non-essential travel to the state of Nogales." The warning indicates that "Sonora is a key region in the international drug and human trafficking trades, and can be extremely dangerous for travelers." Further, "[t]he region west of Nogales, east of Sonoyta, and from Caborca north, including the towns of Saric, Tubutama and Altar, and the eastern edge of Sonora bordering Chihuahua, are known centers of illegal activity." 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 husband to visit the applicant in Sonora, Mexico is limited. Additionally, the AAO notes that the applicant's husband's assertions regarding the unsafe conditions in the area where the applicant would reside, and the emotional and psychological difficulties these unsafe conditions have caused him are corroborated by the information contained in the Travel Warning.

Accordingly, when looking at the aforementioned factors in the aggregate, particularly the documented financial responsibilities and asserted financial difficulties of the applicant's husband, the applicant's husband's depression and the observed mood swings he experiences due to the

prospect of 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 her husband if he were to remain in the United States.

With regard to relocation to Mexico, the AAO notes that the applicant's husband has been residing in the United States for 22 years and that the record does not indicate whether he has any remaining family members residing in Mexico. The AAO further notes that the applicant's husband would experience hardship in relocating to Sonora, Mexico. The applicant's husband states that life in that region is unsafe, as individuals are being kidnapped for ransom demands in that country. As previously noted, the United States Department of States has issued a Travel Warning generally confirming this fear. Relocation to Mexico would thus require the applicant abandon his 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 likely exacerbate the applicant's husband's psychological difficulties, as the concern and nervousness regarding his wife's and children's well-being and safety would likely increase. Furthermore, relocation would require the applicant's spouse abandon his community, his place of employment of over 15 years, the counselor familiar with his diagnosis and treatment, and potentially his family, including his children from a prior relationship. Lastly, he would experience concern for his and his children's safety and well-being in the municipality of Sonora, Mexico. When looking at the aforementioned factors in the aggregate, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if he 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 husband would face if the applicant were to reside in Mexico, regardless of whether he accompanied the applicant or stayed in the United States; the applicant's acceptance of her crime and immigration violations and rehabilitation; the general hardship to the applicant's children and parents in the event of separation from the applicant or relocation to Mexico; and the applicant's lack of a criminal history since her disorderly conduct conviction in 2007. The unfavorable factors in this matter are the applicant's criminal conviction for disorderly conduct in 2007; and the applicant's periods of unlawful presence and unlawful employment while in the United States.

With regards to efforts at rehabilitation, the applicant submitted an affidavit dated October 4, 2011, in which she states that she "now knows that what she did in the past would have had these consequences [she] never would have done it." The applicant indicates that she is "ashamed of her bad judgment," and that her husband does not deserve being put in this position. In an affidavit also dated October 4, 2011, the applicant's father indicates that he was diagnosed with type II diabetes 18 years ago. He also suffers from chronic kidney disease and prostatic hypertrophy. The applicant's father indicates that he receives dialysis treatment three times a week and that the applicant is responsible for taking him to receive this treatment and to all other medical appointments. The applicant's father further indicates that he has been living with the applicant since 2002 and that she has been a "blessing in his life." He mentions that the applicant is responsible for his daily care, and that she has always been there for him caring for him and helping with his medical conditions. The applicant's father states that the applicant is a "great daughter, mother and human being" who helps anyone in need.

The record also includes nine letters of support from the applicant's children, stepchildren, family members and friends, all of whom indicate that the applicant is a caring mother, a responsible person, and all of her efforts are directed at maintaining her family together. The letters indicate that the applicant went through difficult times in her childhood and that she has struggled in life. However, her family members and friends all state that she has surpassed these difficulties and now concentrates her efforts at supporting her family. In a letter dated October 4, 2011, [redacted] a family friend, states that the applicant complements a "happy and stable home," and is needed in the United States to continue to care for their household, as she is "in charge of the home for some time while [the applicant's husband] is working [out of state] in California." Thus, the character reference letters in the record support a finding that the applicant has become a more conscientious person and has directed her efforts at taking care of her spouse, parents, children and stepchildren. These are all favorable indicators of efforts at rehabilitation which, when evaluated in the aggregate, demonstrate that the applicant has rehabilitated.

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 her 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.