identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

H6

[redacted]

DATE: NOV 01 2011 Office: CIUDAD JUAREZ 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:

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,

Perry Rhew
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 waiver application will be approved.

The record establishes that the applicant is a native and citizen of Mexico who entered the United States without authorization in September 1999 and did not depart the United States until February 2008. The applicant was thus 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. The applicant does not contest this finding of inadmissibility. Rather, he is seeking a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child, born in 2006.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 23, 2009.

In support of the appeal, the applicant submits the following: a statement from the applicant; an adult evaluation report in regards to the applicant's spouse; a letter from the applicant's child's pediatrician; financial documentation; a letter from the applicant's spouse, dated July 3, 2009; support letters; and an article regarding rights of children from the Office of the United Nations High Commissioner for Human Rights. The entire record was reviewed and considered in rendering this decision.

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

> Aliens Unlawfully Present.-
>
> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> . . . .
>
> (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.
>
> . . . .
>
> (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) 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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or his child 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).

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 U.S. citizen spouse asserts that she will suffer emotional and financial hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. In a declaration she states that she is suffering from stress, depression, sadness, hopelessness and anxiety as a result of long-term separation from her spouse. In addition, the applicant's spouse contends that her daughter is suffering due to long-term separation from her father, thereby causing her hardship. Finally, the applicant's spouse contends that prior to her husband's departure from the United States, he played a critical role in the financial support of the household, but since his departure and the loss of his income, and the subsequent loss of her job due to a layoff, she is unable to support herself and her child. She asserts that she is supporting herself with unemployment insurance through the State of California. She notes that her husband has been in Mexico for over sixteen months and has been unable to find work. The one job he did find, she contends, paid him less than $10 per day, making it making it impossible for him to assist her with the finances of the U.S. household. *Letter from* [redacted], dated July 3, 2009. In a separate statement, the applicant asserts that his wife and child are in danger every time they come to visit him in Mexico as American citizens are well-known targets of kidnappings and extortion. He further explains that his wife is unable to afford an updated psychological evaluation. Nevertheless, he contends that she is seeking a free counseling service in the community center to help her deal with her continuing depression. *Statement in Support of Appeal from* [redacted]

In support, an Adult Evaluation Report has been provided from [redacted] [redacted] confirms that the applicant's spouse is showing signs of depression as a result of her husband's inadmissibility. [redacted] concludes that were the applicant unable to reside in the United States, the applicant's spouse would not be able to tolerate the loss and its

very serious and damaging consequences. *Adult Evaluation Report from* dated March 6, 2008. In addition, a letter has been provided from the applicant's child's pediatrician, noting that the applicant's child is exhibiting signs of prolonged anxiety, chronic constipation and difficult behavior and would be greatly helped by the presence of her father at the home. *Letter from* , dated July 5, 2009.

In addition, the record establishes that the applicant's spouse is experiencing a financial shortfall as a result of the loss of her husband's income. She has been placed in collections and is relying on her extended family to make ends meets. Moreover, the record indicates that the applicant's spouse is collecting unemployment benefits from the State of California as a result of being laid off from her long-term job with Further, numerous letters have been provided from friends, family members and a previous co-worker establishing the emotional and financial hardships the applicant's spouse is experiencing as a result of long-term separation from the applicant. Finally, the AAO notes that the U.S. Department of State has issued a Travel Warning for Mexico, and in particular, Sinaloa, the applicant's home state. The travel warning advises U.S. citizens and lawful permanent residents of the high rates of crime and violence in Mexico. As noted by the U.S. Department of State,

> Sinaloa and Southern Sonora: One of Mexico's most powerful TCOs is based in the state of Sinaloa. Since 2006, more homicides have occurred in the state's capital city of Culiacan than in any other city in Mexico, with the exception of Ciudad Juarez. You should defer non-essential travel to Culiacan and exercise extreme caution when visiting the rest of the state. Travel off the toll roads in remote areas of Sinaloa is especially dangerous and should be avoided.

Travel Warning-Mexico, U.S. Department of State, dated April 22, 2011.

The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse would experience due to the applicant's inadmissibly rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

The applicant's U.S. citizen spouse asserts that she does not want to relocate to Mexico as she and her child will suffer in a foreign country, thereby causing her hardship. She explains that she and her child were born and raised in the United States and have no ties to Mexico and a long-term separation from her family, including her parents and seven siblings, her friends, her church and her community would cause her hardship. Moreover, the applicant's spouse references the problematic country conditions in Mexico, including poverty, lack of affordable and reliable health care resources and substandard educational opportunities for her U.S. citizen child. *Supra* at 1-2.

The record reflects that the applicant's spouse was born and raised in the United States. Were she to relocate to Mexico to reside with the applicant, she would have to adjust to a country with which she is not familiar and would experience a decrease in her standard of living because of economic conditions there. She would have to leave her community, her church and her family and she would be concerned for her and her child's well-being in Mexico. Finally, as noted above, the U.S. Department of State has issued a travel warning, advising U.S. citizens and lawful permanent residents of the high rates of crime and violence in Mexico, including the applicant's home state of Sinaloa. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse 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 hardship the applicant's U.S. citizen spouse and child would face if the applicant were to remain in Mexico, regardless of whether they accompanied the applicant or stayed in the United States, his community ties, his long-term gainful employment prior to departing the United States, support letters from the applicant's and his spouse's family and friends and the applicant's employer, his membership with Our Lady of Soledad Parish, the apparent lack of a criminal record, an offer of employment extended to the applicant by his U.S. employer and the passage of more than twelve years since the applicant's unlawful entry to the United States. The unfavorable factors in this matter are the applicant's unauthorized entry to the United States and unlawful presence and unlawful employment while in the United States.

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's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.

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