**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Administrative Appeals Office*
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H6

[redacted]

DATE: DEC 14 2012 OFFICE: MEXICO CITY (ANAHEIM) [redacted]

IN RE: [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 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 Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects the applicant is a native and citizen of Mexico who entered the United States without admission in February 2004. He remained in the country until November 18, 2010, when he returned to Mexico. The applicant was found to be inadmissible to the United States under 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 for more than one year and seeking readmission within 10 years of his departure from the United States. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He 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 live in the United States with his wife.

In a decision dated August 3, 2011, the director concluded the applicant had failed to establish that a qualifying relative would experience extreme hardship if the applicant were denied admission into the United States. The waiver application was denied accordingly.

The applicant asserts on appeal that his wife will experience extreme emotional, financial and physical hardship if he is denied admission into the United States. To support these assertions the applicant submits letters from his wife and family members, a psychological evaluation and medical evidence for his wife, financial documentation, photographs and citizenship and identification information for family members.

Section 212(a)(9)(B)(i) of the Act provides in pertinent part that any alien 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.

In the present matter, the record reflects the applicant entered the United States without admission in February 2004, and he departed the country on November 18, 2010. Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. The applicant was unlawfully present in the United States for over one year, and he has not been absent from the country for ten years. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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

> Waiver.-The Attorney General [now, Secretary, Department 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

> [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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez-Moralez,* 21 I&N Dec. 296 (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,* 22 I&N Dec. 560, 565 (BIA 1999), 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. 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).

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 v. I.N.S.,* 138 F.3d 1292, 1293 (9th Cir. 1998) (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 U.S. lawful permanent resident. She is therefore a qualifying relative under section 212(a)(9)(B)(v) of the Act. The record reflects that the applicant's mother and father are also U.S. lawful permanent residents. Accordingly, the applicant's parents are also qualifying relatives under section 212(a)(9)(B)(v) of the Act.

The applicant's wife states in letters that she came to the United States in 1994, at the age of 8, and that her entire family lives in the United States. She would lose her U.S. lawful permanent resident status if she moved to Mexico; however she fears continued separation from the applicant could destroy their marriage. She relied on the applicant financially before his departure, and although she now works seasonally as a farm worker, she earns only $8.00 an hour. She must live with her parents because she is unable to support herself on her own and she contributes financially to her family. She fears losing her job because she cannot concentrate at work due to the applicant's situation; she feels severely anxious and depressed; and she has trouble eating and sleeping and suffers from crying episodes. She has sought psychological treatment and is currently taking medication for depression and insomnia. She also requires medical treatment for anemia and infertility, and she is unable to pay for health insurance on her own. The applicant's family is in the United States; he has no job or place to live in Mexico; they "would be suffering together in the streets" in Mexico, and she fears she and the applicant will be harmed due to high levels of crime and violence in Michoacán, where the applicant lives.

A psychiatric evaluation indicates that the applicant's wife suffers from major depressive disorder and generalized anxiety due to stress and fears relating to the applicant's inability to return to the United States. The family nurse-practitioner recommends medication and counseling for the applicant's wife. Medical records reflect that in 2009, the applicant's wife was diagnosed with iron-deficiency anemia due to severe blood loss during menstruation, and that she received blood transfusions in 2009. She has also been diagnosed with uterine malformation that may impact her

fertility, and she has an ovarian cyst. Additionally, she has sought treatment for headaches that are accompanied by nausea and dizziness.

Employment and federal income-tax documents confirm the applicant's wife's employment and salary. The evidence shows that their joint salaries for three years prior to the applicant's departure were between $24,000 and $35,000.

Letters from the applicant's wife's parents attest to the applicant's good character and state their daughter depended on the applicant emotionally and financially. The applicant's parents state in letters that the applicant's entire family is in the United States, and that they need the applicant near them.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility, if she remains in the United States, separated from the applicant. Evidence establishes the applicant's wife is suffering from major depression and anxiety due to her separation from the applicant and her concerns regarding his safety in Mexico. Moreover, at least one country-conditions report confirms the applicant's wife's concerns regarding unsafe and violent conditions the applicant faces in Michoacán, Mexico *See* http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html. In addition, evidence establishes the applicant's wife is unable to support herself solely on the income she earns as a field worker. She also has medical conditions that require monitoring and treatment, and she is unable to afford health insurance on her own. The cumulative evidence establishes the applicant's husband will experience extreme hardship if she remains in the United States, separated from the applicant.

The evidence, considered in the aggregate, establishes the applicant's wife would also experience hardship beyond that normally experienced upon removal or inadmissibility if she relocates to Mexico to be with the applicant. The applicant's wife has lived in the United States most of her life, since she was 8 years old, and her entire family lives in the United States. A lengthy departure from the United States could cause her to lose her lawful permanent resident status. *See* section 223 of the Act, 8 U.S.C. § 1203. Furthermore, her safety concerns in Mexico are confirmed by a country-conditions report recommending that non-essential travel to Michoacán be deferred and noting that incidents of transnational criminal organization-related violence have occurred throughout the state. *See* http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html.

The AAO finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(a)(9)(B) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 s/he is excluded and/or 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 unfavorable factors in this matter are the applicant's entry without inspection and his accrual of unlawful presence in the United States between February 2004 and November 2010. The favorable factors are the hardship the applicant's wife and family would face if the applicant is denied admission into the United States, his extensive family ties in the United States, his good moral character, and his lack of a criminal record. The AAO finds that although the immigration violations committed by the applicant are serious in nature and cannot be condoned, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met his burden of proving eligibility for a waiver of his ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. The Form I-601 appeal will therefore be sustained.

**ORDER:** The appeal is sustained.