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

[redacted]

H6

Date: DEC 17 2012 Office: MILWAUKEE, WI 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 (the 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Milwaukee. Wisconsin. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a 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 pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant previously had no legal representation. Counsel submits additional evidence of hardship, including evidence the applicant's husband has turned his life around, in large part because of his wife, after having been convicted of three felonies and serving time in prison.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted] indicating they were married on November 20, 2009; a letter from the applicant; a letter from [redacted] a letter from a psychotherapist; a letter from [redacted] parole officer; letters from [redacted] children; letters of support; copies of tax returns and other financial documents; an article addressing recidivism; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the 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 from September 2002 to the present, she entered the United States numerous times using a B1/B2 visitor's visa and overstayed her authorization to remain in the United States several times, including from the time her visa expired in September 2007 until her departure in July 2009. Accordingly, the applicant is 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 to the United States within ten years of her last 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.

In this case, the applicant's husband, [redacted] states that he has turned his life around because of his wife. According to [redacted] in 2002, he was sentenced to six years in prison for armed robbery. He states that after his release, he met the applicant, and that because of his wife, he now has a good job and has not had one instance of misconduct. He states she is the most caring and loving person he has ever met. He contends she helps his three children - his son, whom he has sole custody, his daughter who is in college, and his youngest daughter who is residing with her mother. According to [redacted] he has been suffering from anxiety and depression because of the possibility of not having his wife by his side. He states that he fears that all of the progress and efforts he has made to live a productive and positive life will all be in vain if his wife is not by his side to give him a purpose to stay on track. He states that if it was not for her, he would be a victim of recidivism. Furthermore, [redacted] states he is unable to move to, or even visit, his wife in Mexico because he is on extended supervision and is not able to leave the country.

After a careful review of the record, the AAO finds that the applicant's husband, [redacted] will suffer extreme hardship if the applicant's waiver application were denied. The record contains ample documentation showing that [redacted] has turned his life around after being released from prison. A letter from a psychotherapist confirms that one of the main reasons [redacted] was able to turn his life around is because of the applicant who is his primary source of emotional support and encouragement. In addition, the psychotherapist diagnoses [redacted] with bipolar disorder and adjustment disorder with anxiety, and states that he has suffered severe losses early in his life including the deaths of his mother and brother. The psychotherapist also contends that losing his wife would be a serious blow to his emotional and psychological stability. Similarly, a letter from [redacted] probation officer states that [redacted] has maintained employment, has regularly met with his probation officer, and has cooperated with all aspects of his court order. According to the probation officer, stability is the main factor for success in the criminal justice system and [redacted] wife is an important part of his success and has been a positive support for him. In addition, letters from [redacted]

[redacted] children corroborate the contention that the applicant has totally changed and "opened up a whole new life" for [redacted], that he had previously not been involved in his children's lives, but that his relationship with the applicant has made him a family-oriented person who is now a supportive and loving father to his children. [redacted] children fear that their father's separation from his wife would cause him not to be as stable as he is now and they fear he would not continue being the supportive and loving father he has become. Considering these unique circumstances, the AAO finds that if [redacted] stays in the United States without his wife, 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 [redacted] The record contains a copy of the Wisconsin's rules regarding adult supervision for offenders on probation or parole which explicitly states that "[a]uthorization to travel to foreign countries shall not be granted to clients." Therefore, [redacted] is prohibited by law to depart the United States and would face serious consequences were he to leave. Considering the unique factors of this case, the AAO finds that the hardship [redacted] would experience if he relocated to Mexico to be with his wife 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 [redacted] 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 factor in the present case includes the applicant's unlawful presence in the United States. The favorable and mitigating factors in the present case include: family ties in the United States including her U.S. citizen husband and three U.S. citizen stepchildren; the extreme hardship to the applicant's family if she were refused admission; numerous letters of support describing the applicant as a hardworking and honorable woman, a loving mother, a great role model, and an outstanding person sent from God; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violation is 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. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.