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

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DATE: MAR 09 2012 Office: CIUDAD JUAREZ, MEXICO FILE: [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:

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 Form I-601, Application for Waiver of Grounds of Inadmissibility 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 applicant is a native and citizen of Mexico who was unlawfully present in the United States between September 2002 and July 2008. 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 in the United States 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 (Form I-130). 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 spouse and family.

In a decision dated November 19, 2009, the director concluded the applicant had failed to establish that his wife would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

The applicant asserts on appeal that evidence establishes 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 affidavits, employment, and medical evidence, as well as documents relating to his children, and letters from friends and family attesting to his good character and his wife's hardship. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (i) [A]ny 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.

Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure from the United States, remains in force until the alien has been absent from the United States for

ten years. In the present matter, the record reflects the applicant was unlawfully present in the United States for over one year between September 2002 and July 2008, at which time he departed the country. He has remained outside of the United States for less than ten years. He is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility.

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

> Waiver.-The Attorney General 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 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,* 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 (BIA) 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 BIA 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 BIA 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 BIA 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 is married to a U.S. citizen. His spouse is a qualifying relative for section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility purposes.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Accordingly, hardship to the children will be considered only to the extent that it causes the applicant's spouse to experience hardship.

The applicant's wife states in her affidavits that she and her husband have been married since 2003, and that they have two children together (an 8 year-old daughter and a 5 year-old son). The applicant's wife and children have lived separated from the applicant since 2008. The applicant's wife states that it would cause her emotional, financial and physical hardship to relocate to Mexico to be with the applicant. Although born in Mexico, she has spent most of her life in the United States. She states that all of her family lives in the United States, and she relies on them for emotional, family and other support. She also works full-time and would lose her job and source

of income if she relocated. The applicant's wife states that their son has asthma, and that although she does not receive medical benefits through her employer, the children receive basic medical assistance through the state of California. She states that her husband lives in poverty conditions in Mexico, and that his only employment options are daily construction work that pays little. There is no medical facility in her husband's home town, and she worries their son would suffer medically in Mexico. The applicant's wife also worries that their children would not receive a good education in Mexico, and she worries for the safety of her family because of drug-cartel related violence. She states that her husband's separation has caused her to feel anxious and depressed, and that she is on medication for depression that has made her feel sick and caused her to lose a lot of weight. Their daughter has also become withdrawn and sad due to the applicant's absence. The applicant's wife indicates further that she now has financial difficulties and that she relies on food assistance programs to feed herself and their children.

Psychological evaluation evidence in the record shows the applicant's wife has been diagnosed with major depressive disorder, and describes her as an active participant in weekly therapy sessions. A letter from the applicant's daughter's pre-school teacher reflects that their daughter has become withdrawn and that she cries constantly since her father moved to Mexico. A letter from the children's babysitter states that the children have become more aggressive since their father's departure from the United States. The letter also notes that the children spend more time with the babysitter than with their mother now, because their mother works more. Employment verification letters confirm the applicant's wife's employment since June 2006 and reflect she works full-time. The record also contains evidence that the applicant's wife receives emergency food assistance from the community hospital every three months, and the record contains medication receipts for their son. The record additionally contains numerous letters from friends and family attesting to the applicant's good character and noting their observance of his wife and children's financial and emotional struggles, and his wife's weight loss.

Upon review, the AAO finds that the psychological, medical, financial, and country conditions evidence in the record, when considered in the aggregate, establishes the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States, and his wife remained in the United States, separated from the applicant, or if she relocated with her family to Mexico.

Country conditions evidence supports the applicant's wife's concerns that she and their children would reside in a dangerous environment if they moved to the applicant's home in Mexico. A U.S. Department of State Travel Warning issued on February 8, 2012, states that due to transnational criminal organization violence, the security situation is unstable in the cities of Tepic and Xalisco, Nayarit, where the applicant's husband is from, and that non-essential travel to these areas should be avoided. *See* [redacted] In addition, the applicant worries that their children, especially their son, would be unable to receive medical care where the applicant lives. The applicant's wife has lived most of her life in the United States and her family is in the United States. Moreover, the applicant's wife indicates that her husband's salary would not support a family of four in Mexico, she is unsure she would be able to find gainful employment in Mexico, and she would give up her job of five years if she

relocated. The cumulative evidence establishes that the applicant's wife would experience emotional and financial hardship beyond that normally experienced upon removal or inadmissibility if she moved with her family to Mexico.

The evidence, considered in the aggregate, establishes that the applicant's wife would also experience emotional and financial hardship beyond that normally experienced upon removal or inadmissibility if she remains in the United States, separated from the applicant. In addition to experiencing major depressive disorder, the applicant's wife is further burdened by the children's sadness and aggressive behavior, which she attributes to the absence of their father and her inability to spend more time with them due to her work schedule. Many of the affidavits submitted by friends indicate that the applicant's wife earns a minimum wage at her job. Evidence in the record establishes that in spite of her full-time work, the applicant's wife has relied on emergency food assistance every three months to feed her family since her husband left the country.

The AAO finds further 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 accrual of unlawful presence and employment without authorization in the United States. The favorable factors are the hardship the applicant's wife and children would face if the applicant is denied admission into the United States, the applicant's good moral character, and the applicant's lack of a criminal record. The AAO finds that although the immigration violations committed by the applicant are very 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 his 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.