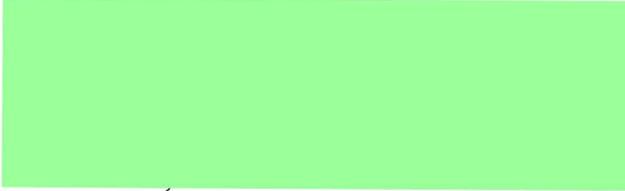


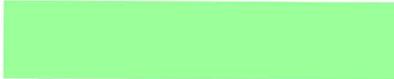


(b)(6)

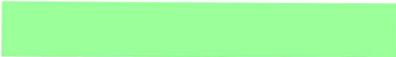


DATE: JUN 24 2013

Office: ANAHEIM



IN RE: Applicant:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of 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 is approved.

The record reflects that the applicant is a native and citizen of Mexico who entered the United States without authorization in 1999 and did not depart the United States until October 2007. The applicant accrued unlawful presence from September 2006, when he turned 18 years of age¹ until October 2007. 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 father and lawful permanent resident mother.

The field office director concluded that 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 May 25, 2012.

On appeal, the applicant submits the following: letters from the applicant's father and mother; medical and mental health documentation pertaining to the applicant's father and mother; and financial and employment documentation in regards to the applicant's father and mother. 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

¹ Section 212(a)(9)(B) of the Acts states, in pertinent part:

- (iii) Exceptions—
 - (I) Minors

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

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 father and lawful permanent resident mother are the only qualifying relatives in this case. Hardship to the applicant 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-Morales*, 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 parents contend that they will suffer hardship if they remain in the United States while the applicant continues to reside abroad due to his inadmissibility. In a statement provided by the applicant’s U.S. citizen father, he explains that he is depressed and sad as a result of long-term separation from his son. He notes that his other children are in the United States with him and his wife but the applicant is residing in Mexico by himself and such an arrangement is causing him and his wife hardship. Moreover, the applicant’s father contends that both he and his wife work but they make a modest income, and having to support their family in the United States and their son in Mexico, where he has not been able to find gainful employment to support himself, is causing them financial hardship. As a result of their modest income and their expenses, the applicant’s father explains that he and his wife are unable to afford to travel to Mexico regularly to visit their son. The applicant’s father maintains that were his son to live in the United States, he would be able to work and assist in the finances of the household. Finally, the applicant’s father references the violence in Mexico and expresses concern for his son’s safety while in Mexico. See *Letters from* [REDACTED] [REDACTED] dated June 30, 2011 and June 23, 2012. In a separate statement, the applicant’s mother echoes her husband’s sentiments regarding the emotional and financial hardship she is experiencing

as a result of long-term separation from her son. *Letter from* [REDACTED] dated June 23, 2012.

In support, documentation has been provided establishing that the applicant's parents are suffering from major depression, exacerbated by long-term separation from their son. *See Letters from* [REDACTED] dated June 20, 2012 and [REDACTED] *Psychiatrist*, dated June 7, 2012. In addition, documentation has been provided establishing that the applicant's mother's medical condition, esophageal problem with reflux, and the applicant's father's medical condition, chronic aphthous ulcers, are worsening as a result of the stress they are experiencing due to long-term separation from their son. *See Letters from* [REDACTED] dated June 19, 2012 and *Pablo* [REDACTED] dated June 14, 2012. Further, evidence has been provided establishing that the applicant's parents have over \$11,000 in outstanding debts and at the same time are sending money to Mexico to financially support their son. Finally, numerous support letters have been submitted establishing the critical role the applicant played in his parent's lives prior to his departure from the United States.

The AAO finds the court's finding in *Salcido-Salcido*, that separation of an alien from family living in the United States is the most important single hardship factor, to hold considerable weight in the instant appeal. The applicant continuously resided in the United States since 1999, when he was 11 years of age, until his departure in 2007. The record establishes the close bond the applicant has with his parents, siblings and community. The AAO concludes that a separation at this time would cause hardship beyond that normally expected of one facing the removal of a child. The applicant's parents need the emotional and financial support that the applicant provides; the applicant's long-term absence would be an extreme hardship for the applicant's parents. The AAO thus concludes that based on the cumulative evidence provided, it has been established that the applicant's parents will suffer extreme hardship were they to remain in the United States while the applicant resides abroad due to his inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criterion, the applicant's father contends that relocating abroad would mean long-term separation from their children, their community and gainful employment. The record establishes that the applicant's father became a lawful permanent resident more than 26 years ago. The applicant's parents' entire family, including their other children, reside in the United States. Based on the declarations provided, the family is close-knit. Were the applicant's parents to relocate abroad to reside with the applicant, they would lose ties to their family, their long-term gainful employment, the medical practitioners familiar with their conditions and treatment plan, their home and their community. They would have to start over in a country in which they have not lived in many years, at a time when the applicant's father is reaching retirement age. Based on a totality of the circumstances, the AAO finds that relocating abroad to reside with the applicant would cause the applicant's parents extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his parents would suffer extreme hardship were the applicant unable to

reside in the United States. Moreover, it has been established that the applicant's parents would suffer extreme hardship were they to relocate abroad to reside with the applicant. 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-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 hardships the applicant's parents and siblings would face if the applicant were to remain in Mexico, regardless of whether they accompanied the applicant or remained in the United States, community ties, support letters, certificate issued to the applicant for "Perfect Attendance 5th and 6th Grade", high school diploma from [REDACTED] in Georgia, the apparent lack of any criminal convictions and the passage of more than a decade since the applicant's entry without authorization. The unfavorable factors in this matter are the applicant's entry to the United States without authorization and unauthorized presence 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 application approved.

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