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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAR 20 2013 Office: CIUDAD JUAREZ FILE:

IN RE: Applicant:

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), and section 212(i) of the Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

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 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 applicant is a native and citizen of Mexico who was 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 and seeking readmission within 10 years of her last departure from the United States, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated March 9, 2012.

On appeal, counsel for the applicant asserts that the qualifying spouse has experienced extreme hardship since the applicant's return to Mexico and that he will continue to do so if the waiver application is denied. Counsel states that the qualifying spouse has been diagnosed with depression and anxiety, he worries about the applicant's safety in Mexico, he cannot focus on his work, and he is experiencing financial difficulties. *Counsel's Brief.*

The evidence includes, but is not limited to: statements from the applicant and the qualifying spouse; country conditions information; a psychological evaluation; employment records; medical records; and letters of support from friends. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United

> States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

In the present case, the record reflects that the applicant attempted to enter the United States unlawfully in October 2003. When apprehended at the border by immigration officers, she provided a false name. Therefore, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission through fraud or misrepresentation. She does not contest this finding of inadmissibility on appeal.

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

> (B) ALIENS UNLAWFULLY PRESENT.-
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> (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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record also reflects that later in October 2003, the applicant successfully entered the United States without inspection. She remained in the country until April 2011. Therefore, the applicant accrued more than one year of unlawful presence and is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from her last departure. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act as the spouse of a lawful permanent resident. In order to qualify for a

waiver, however, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her 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 U.S. 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 v. INS*, 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.

In his statements, the qualifying spouse asserts that life has been very difficult for him since the applicant departed the United States for Mexico. He explains that the applicant used to do the cooking, cleaning, and other household tasks and errands. He states that she took care of him and encouraged him to have a healthy lifestyle. He alleges that since the applicant's departure, he has been under severe stress which has affected his health and his ability to focus. Others have told him that he does not pay attention during conversations, and he fears he will lose his job due to his difficulty focusing at work. He also worries about the safety of the applicant and her daughter in Mexico. He also claims that he has been diagnosed with heart problems and diabetes, both of which could be related to his high stress levels. Furthermore, he states that he and the applicant have been trying to have a child but that the applicant has had two miscarriages. He states that the applicant would be able to receive fertility treatments in the United States but that she cannot afford to do so in Mexico.

The qualifying spouse also contends that he is the sole provider in his family, so he must send money to the applicant in Mexico. He states that he has had trouble supporting two households. He also contends that he cannot visit the applicant in Mexico because he cannot take time off work.

He fears that if he were to move to Mexico, he would be unable to earn enough to support his family. He also states that he does not want to leave his adult son, who is a U.S. citizen and who lives in the United States. Additionally, the qualifying spouse notes that he would lose his permanent residence if he were to relocate permanently to Mexico. He also states that he would like to bring the applicant's daughter to the United States to live with him and the applicant.

The AAO finds that the qualifying spouse will suffer extreme hardship if he continues to be separated from the applicant. The psychological evaluation indicates that the qualifying spouse suffers from moderate anxiety and severe depression and that his "symptoms are barely manageable." *See Psychological Report,* dated March 21, 2012. The evaluation notes that the qualifying spouse has lost 30 pounds due to his stress-related loss of

appetite, that he has become socially withdrawn, that he cannot sleep, and that his anxiety "is seriously affecting his performance at work." *Id.* A friend of the qualifying spouse also notes in her letter that the qualifying spouse's "life [has] changed drastical[l]y" since the applicant left and that he no longer appears to be the "cheerful man" he once was. *See Letter from* dated May 5, 2011. Additionally, a letter from the qualifying spouse's doctor indicates that he has been diagnosed with diabetes, an abnormal EKG, and proteinuria. *See Letter from* The letter state that the separation from his spouse will increase his anxiety and depression and "decompensate his diabetes and heart condition."

The AAO also finds that the qualifying spouse would suffer extreme hardship if he were to relocate to Mexico. Although the qualifying spouse is originally from Mexico, he has been a lawful permanent resident of the United States since 1991. He has close ties to the United States, including a U.S. citizen son, and he has a steady job here. Readjusting to life in Mexico after such a long period of residence in the United States would be difficult for the qualifying spouse, and a permanent relocation to Mexico could cause him to lose his permanent resident status in the United States. Additionally, the qualifying spouse may be unable to obtain treatment for his serious medical conditions, particularly his diabetes and abnormal heartbeat, in Mexico. In the aggregate, the qualifying spouse's depression and anxiety, his medical conditions, and his long residence and close ties in the United States would cause extreme hardship for him if the waiver application were denied. *See Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). Therefore, the AAO finds that the applicant has met her burden of demonstrating extreme hardship to a qualifying relative as required by sections 212(i) and 212(a)(9)(B)(v) of the Act.

In that the applicant has established that the bars to her admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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).

Matter of Mendez, 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).

One favorable factor in this case is the extreme hardship the qualifying spouse would suffer if the applicant's waiver application were denied. Additionally, the record contains several letters of support from friends of the applicant and the qualifying spouse. Those letters indicate that the qualifying spouse is a hard-working and honest person who was a valued member of her community when she resided in the United States. *See Letters from*

The unfavorable factors are the applicant's misrepresentation of a material fact and her unlawful presence in the United States.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.