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 2 7 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, 8 U.S.C. § 1182(a)(9)(B)(v).

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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her U.S. citizen spouse and denied the application accordingly. *See Decision of Field Office Director*, dated April 20, 2012.

On appeal, counsel for the applicant states that the qualifying spouse has suffered extreme hardship since the applicant departed the United States for Mexico.

The record includes, but is not limited to: statements from the qualifying spouse; a custody order regarding the qualifying spouse's children; letters from the qualifying spouse's doctors; letters of support from the qualifying spouse's daughter, nephew, coworkers, employer, and friend; and a clearance letter from the Wichita Police Department. The entire record was reviewed and considered in rendering a decision on the 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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> . . . .
>
> (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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> . . . .
>
> (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.

In the present case, the record reflects that the applicant entered the United States without inspection in March 2008 and remained without authorization until December 2010. Therefore, the applicant accrued one year or more of unlawful presence and is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from her departure from the United States. She does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act as the spouse of a U.S. citizen. In order to qualify for this waiver, however, she must prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. Hardship to the applicant herself is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. 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 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. 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.

On appeal, the qualifying spouse states that life has been very difficult for him since the applicant departed for Mexico. He indicates that he feels that he must choose between his wife and his U.S. citizen children and that he "would rather die than have to make such a decision." He explains that he has four children with his ex-wife and that he has residential custody of two of the children. If he were to relocate to Mexico, his ex-wife would not allow him to take any of his children with him. The qualifying spouse asserts that as a result of his stress over his separation from the applicant, he has become depressed and has developed high blood pressure and heart problems, including chest pain. He states that his anxiety is overwhelming, that he feels nauseated every morning when he wakes up, and that he feels "completely immobilized, irritable and prone to anger." He indicates that his anxiety interferes with his ability to focus and also causes physical symptoms including stomachaches and headaches.

The qualifying spouse also contends that if he were to relocate, he would lose his stable job in the United States and would be unable to find work at a comparable salary in Mexico. He fears that he would be unable to pay his debts in the United States or support his family and that he would not have health insurance. Additionally, the qualifying spouse asserts that Mexico is a very dangerous country and that drug violence occurs in his hometown.

The AAO finds that the qualifying spouse will suffer extreme hardship if he continues to be separated from the applicant. The record reflects that the qualifying spouse has been experiencing serious illnesses which are related to his stress over the separation. He has been treated at a cardiology clinic for "[a]ngina and atypical chest pain," "[i]ncreased anxiety and depression," and "[a]bnormal EKG with early repolarization." *See Chart Note,* dated January 20, 2012. His doctor also states that the qualifying spouse's chest pain has been worsening and that the qualifying spouse "feels very anxious and depressed as his wife is in Mexico and is not here to take care of him." *Id.* Another doctor indicates that the qualifying spouse has been receiving treatment for depression and anxiety and that his separation from the applicant "is making his medical condition worse." *See Letter from* dated January 24, 2012.

Furthermore, people who are close to the qualifying spouse confirm that he has been depressed in relation to the absence of the applicant and that it has affected his daily life. The qualifying spouse's daughter writes that she "would like to see [her] father happy again by being re-united with his wife." *See Letter from* dated May 8, 2012. One of his coworkers states that "it shows at work that he is unhappy and is a little quieter and keeps more to himself at work than normal." *See Letter from* Another coworker explains, "I see him a little down at work lately." *See Letter from* His supervisor states, "Recently we have noticed that he seemed depressed and we asked him if there was anything we could do to get him help. His response was that his family has been waiting Immigration [sic] to the United States and that has been extremely hard on him. I understand that he is taking depression medication to help with this difficult time in his life." *See Letter from* dated January 31, 2012. Additionally, a friend notes that he has "been noticing that [the qualifying spouse's] behavior has changed in the last year. We found out that his depression has been a cause of [sic] his wife [a]waiting her immigration to the United States." *See Letter from* dated January 2, 2012.

The AAO also finds that the qualifying spouse would suffer extreme hardship if he were to relocate to Mexico to join the applicant. The record establishes that the qualifying spouse shares custody of his four U.S. citizen children with his ex-wife and that two of his children reside with him. If the qualifying spouse were to relocate to Mexico, he would likely be unable to take any of his children with him and could therefore become permanently separated from or lose custody of them. Additionally, the qualifying spouse has been a naturalized U.S. citizen since 2001. He has established close ties in this country and he has a stable job here. Furthermore, the qualifying spouse and the applicant are both originally from the state of Zacatecas, Mexico, to which the U.S. Department of State recommends that U.S. citizens "defer non-essential travel"

due to high rates of violence there. *See U.S. Department of State, Travel Warning: Mexico*, dated November 20, 2012.

In the aggregate, the AAO finds that the qualifying spouse's serious physical and mental health concerns, his custody arrangement regarding his four U.S. citizen children, his close ties to the United States, and the security situation in his home state in Mexico would create extreme hardship for him if the waiver application were denied. The AAO therefore 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.

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).

The favorable factors in this case include the extreme hardship the qualifying spouse would suffer if the applicant's waiver application were denied; the role the applicant has played as a step-mother to the qualifying spouse's children; and the fact that she has no criminal history. The unfavorable factors are the applicant's entry without inspection and 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.