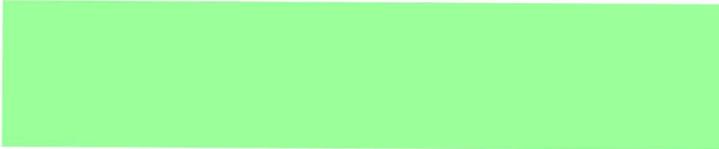
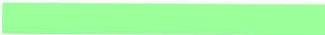
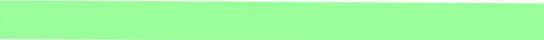




(b)(6)



Date: **APR 03 2014** Office: ANAHEIM, CA 

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)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Mexico City. The Administrative Appeals Office (AAO) dismissed the appeal and a subsequent motion. The matter is now before the AAO on a second motion.¹ The motion will be granted and the waiver application approved.

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 Act for having been unlawfully present in the United States for more than one year. The applicant is married to a lawful permanent resident 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 child in the United States.

The International Adjudications Support Branch found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. The AAO dismissed the appeal, also finding that the applicant failed to establish extreme hardship. On motion, the AAO concluded that although the applicant established that her husband would suffer extreme hardship if he decided to remain in the United States, the applicant did not establish that her husband would suffer extreme hardship upon relocation to Mexico.

Counsel now files a second motion contending, among other things, that the AAO erred in finding that the applicant failed to show that the psychotherapist who evaluated the applicant's husband has any credentials or expertise on Mexico. Counsel contends the psychotherapist's credentials were, in fact, submitted. Citing the U.S. Department of State's website, counsel also contends that the psychotherapist is qualified to give a medical opinion regarding how the employment, medical care, and living conditions in Mexico affect a patient's health. In addition, counsel contends that not all of the new evidence that was submitted with the previous motion was considered and that, under the totality of the circumstances, the applicant established extreme hardship to her husband, particularly considering his mental health as well as the couple's daughter's suicidal thoughts.

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 -

....

(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.

¹ Although counsel contends he is filing an appeal of the AAO's last decision, because there is nothing in the regulations allowing for an administrative appeal of an AAO decision, we construe the current Form I-290B to be a motion pursuant to 8 C.F.R. §103.5.

.....

(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 AAO previously found that the applicant entered the United States without inspection in August 2000 and returned to Mexico on September 15, 2011. Therefore, 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 within ten years of her departure. Counsel does not contest this finding of inadmissibility on motion.

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.

After a careful review of the entire record, the AAO finds that the applicant’s husband, [REDACTED] will suffer extreme hardship if the applicant’s waiver application were denied. The AAO previously found that [REDACTED] would suffer extreme hardship if he remains in the United States without his wife. The AAO will not disturb that finding. The AAO also finds that if [REDACTED] relocates to Mexico to avoid the hardship of separation, he would also suffer extreme hardship. The record establishes that [REDACTED] has been diagnosed with several mental health conditions including, but not limited to: severe Major Depressive Disorder with a high risk for suicide, Acute Stress Disorder, Generalized Anxiety Disorder with panic, Separation Anxiety, Mood Disorder, Anxiety Disorder, and Adjustment Disorder with Mixed Disturbance of Emotions and Behavior. The record also contains several letters from the couple’s daughter’s physician in Mexico establishing that she has been diagnosed with childhood depression, has learning problems, has a communication disorder, talks about suicide, and acts in an aggressive manner. As counsel contends, [REDACTED] undoubtedly is deeply troubled over his daughter’s suicidal thoughts and according to his psychotherapist, the added stress of relocating to Mexico would worsen his mental health conditions. In addition, the record contains documentation showing [REDACTED] has been diagnosed with diabetes, hypertension, and hyperlipidemia since 2007 and has been under the care of his physician since May of 2012, who confirms that [REDACTED] health has been negatively affected since his wife departed the United States. Relocating to Mexico would disrupt the continuity of [REDACTED] medical care. Furthermore, a letter from [REDACTED] employer in the record shows he has worked for the same

employer for more than eleven years. Relocating to Mexico would entail leaving his job and all of its benefits. Moreover, counsel cites the U.S. Department of State's website regarding country conditions in Mexico and the AAO takes administrative notice that the U.S. Department of State has issued a Travel Warning for parts of Mexico, including Jalisco, where the applicant was born and currently resides. *U.S. Department of State, Travel Warning, Mexico*, dated January 9, 2014. Considering all of the evidence in the aggregate, the AAO finds that the hardship [REDACTED] would suffer if he relocates to Mexico 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 factors in the present case include the applicant's entry into the United States without inspection and unlawful presence in the United States. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including her U.S. citizen husband and U.S. citizen daughter; the extreme hardship to the applicant's entire family if she were refused admission; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The motion is granted and the waiver application approved.