(b)(6)

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

U.S. Citizenship and Immigration Services

[redacted]

DATE FEB 05 2014 OFFICE: ANAHEIM, CA FILE [redacted]

IN RE: APPLICANT: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[redacted]

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,

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, Ciudad Juarez, Mexico, and was dismissed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying 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 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 lawful permanent resident spouse and U.S. citizen daughter.[1]

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated September 22, 2012.

The AAO affirmed, finding the record did not establish that the applicant's lawful permanent resident spouse would experience extreme hardship in the scenarios of continued separation and relocation to Mexico. *See AAO Decision* dated May 23, 2013. The appeal was consequently dismissed. *Id.*

On motion, the applicant's spouse claims he will experience emotional and financial difficulties without the applicant present in the United States. The spouse moreover asserts he would be unable to relocate to Mexico due to the dangerous country conditions, financial difficulties, inadequate educational system, separation from his twin boys, and other ties to the United States. In support, counsel submits documentation of birth, marriage, and residence, educational records, photographs, a family tree, letters from family, friends, and employers, financial documents, and articles on country conditions in Mexico.

The requirements for a motion to reopen are delineated in 8 C.F.R. § 103.5(a)(2). This regulation states, in pertinent part, that "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." As counsel has articulated new facts and submitted documentary evidence in support, the motion will be granted.

The record includes, but is not limited to, the documents listed above, other applications and petitions, and other evidence in Spanish without an English language translation. The AAO notes that the documents in Spanish without a certified English language translation cannot be considered on appeal, pursuant to 8 C.F.R. §103.2(b)(3)(2013).[2] As such, besides the Spanish

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[1] Counsel claims the applicant's spouse is a U.S. citizen, but it appears from USCIS records that he remains a lawful permanent resident.

[2] 8 C.F.R. § 103.2(b)(3) (2013) states:

language documents without certified English translations, the entire record was reviewed and considered in rendering a decision on the motion.

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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> (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.
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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 applicant admitted in a consular interview that she entered the United States without inspection in March 2000 and returned to Mexico in March 2010. Inadmissibility is not contested on motion. The AAO therefore affirms that, based on the present record, the applicant accrued more than one year of unlawful presence, and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act until March 2020. The applicant's qualifying relative for a waiver of this inadmissibility is her lawful permanent resident spouse.

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(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

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 v. I.N.S.*, 138 F.3d

1292 (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.

The applicant's spouse contends he would experience financial and emotional difficulties without the applicant present. He states he earns $48,000 a year, and has been working for the same employer since 2001. A letter from the spouse's employer is submitted on motion. The spouse indicates in addition to his household expenses he provides child support for two children he has with another woman, he sends the applicant and their daughter $400 a month, and he helps support his parents. The spouse concludes that he is financially burdened, especially when he spends money to visit the applicant and their daughter in Mexico. A monthly income and expenses worksheet as well as documentation of household expenses are submitted in support. The spouse contends his daughter is getting a poor education in Mexico, and he intends to bring her back to the United States to attend school here. He explains that if he does this, his finances will be further stretched because he will have to pay for child care during his work hours. The spouse additionally expresses his worry over the applicant's and their child's safety in [redacted] Mexico, and states that he misses having a marital relationship with the spouse. He explains that not only do they live in danger with no male relative to protect them, but the applicant also does not have time to be employed because she spends four hours each day walking their daughter to and from school. The spouse additionally states that he has difficulties paying for his daughter's medical care out of pocket, and because she is not a Mexican citizen she is missing vaccinations. The spouse contends he fears the kidnapping, violence, and gang activity due to [redacted] drug cartel's presence in [redacted]

The spouse claims if he relocated to [redacted] Mexico, he would experience financial, familial, and safety-related difficulties. He claims he would be unable to earn sufficient income to meet his financial obligations with respect to his own living expenses, the child support he pays for his twin boys, expenses for the applicant and their daughter, and his responsibilities towards his parents. An article on wages in Mexico is submitted on motion. The spouse moreover contends that he has built a solid employment history in the United States, as he has worked for the same employer since 2001, and it would be difficult to leave a job where he makes a good income and is well-respected. He adds that relocation would entail separation from his twin boys, who live with their mother in the United States, and that, aside from the applicant and their daughter, he has no friends or family in [redacted] because he has lived in the United States since he was a child. The spouse contends he fears for his safety every time he visits the applicant and their child, and that he is very relieved when he enters United States soil.

The applicant has demonstrated that her spouse would experience extreme hardship upon relocation to [redacted] Mexico. The record reflects that the spouse has three year old twin boys who reside in the United States with their mother in Florida, and that relocation to Mexico may entail separation from them. The applicant has also shown that her spouse has more

family ties in the United States, in that his parents and siblings reside in Florida. In addition to family ties, the record reflects that the applicant has long-standing employment in the United States, and that he may not be able to earn a similar wage in in order to meet his financial obligations. The applicant has moreover shown that, in contrast, even though her spouse is a native and a citizen of Mexico, he has minimal ties to that country, because he has lived in the United States his entire adult life.

In light of the evidence of record, the AAO finds the applicant has established that her spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

The applicant has also demonstrated that her spouse would experience extreme hardship in the event of continued separation. The record indicates the applicant and the spouse's 10 year old daughter, live in Mexico. Articles present in the record reflect that, although is not the subject of a current U.S. Department of State travel warning, there is corruption, danger, and drug cartel activity present there. Additionally, the travel warning does indicate that kidnappings are on the rise. Given this evidence, the spouse's concern for his daughter, who walks with the applicant for two hours a day to and from school, is warranted. The spouse has also demonstrated that this concern is further exacerbated by the fact that the daughter, a minor U.S. citizen child, only has her mother present to protect her. Moreover, the spouse's concerns about adverse living conditions are corroborated by photographs of the applicant and their daughter at their residence in Documentation of record also supports assertions on the spouse's worry about his daughter's education in

The AAO therefore finds there is sufficient evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the psychological / emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without him.

Considered in the aggregate, the applicant has established that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The negative factors include the applicant's entry without inspection, evidence of employment in the United States without authorization, and her period of unlawful presence in the United States. The positive factors include the existence of extreme hardship to a qualifying relative, evidence of the applicant's good moral character as stated in letters from family and friends, and the applicant's lack of a criminal history.

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. The motion is granted, and the prior AAO decision is withdrawn.

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