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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 01 2013 OFFICE: CIUDAD JUAREZ (NEBRASKA SERVICE CENTER) FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(d)(11) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(d)(11)

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Nebraska Service Center on behalf of the Field Office Director, Ciudad Juarez, Mexico, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for aiding and abetting an alien to enter the United States in violation of law. She also was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of 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 admission within 10 years of her last departure. The applicant is the spouse of a legal permanent resident of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse and children.

The director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Field Office Director's Decision,* dated January 5, 2012.

On appeal, the applicant's spouse provides new evidence of hardship. *See Form I-290B, Notice of Appeal or Motion*, dated January 31, 2012.

The record contains, but is not limited to: Form I-290B; Form I-601; Form, I-130; statements by the applicant, her spouse, family and friends; medical evaluations, reports and expenses; psychological evaluations of the applicant and her spouse; the applicant's spouse's employment documentation; receipts, expenses and financial documentation; birth certificates; Spanish-language newspaper articles; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

8 C.F.R. § 103.2(b)(3) states:

> (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.

The Spanish-language documents without English translations cannot be considered in analyzing this case. However, the rest of the record was reviewed and all relevant evidence was considered in reaching a decision on appeal.

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

> (i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

Section 212(d)(11) of the Act provides:

> The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of . . . an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record reflects that a U.S. consular officer in Ciudad Juarez, Mexico found the applicant inadmissible under section 212(a)(6)(E) of the Act for smuggling her three year-old daughter into the United States in May 2007. The applicant has established that the individual who she aided to enter the U.S. illegally is an immediate family member. She is eligible for a waiver under section 212(d)(11), which may be granted for humanitarian purposes, to assure family unity, or if it is otherwise in the public interest. Therefore, the AAO, in its discretion approves the applicant's waiver under section 212(d)(11) of the Act to assure family unity.

The record, however, indicates that the applicant also is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9) states in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> (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.

The record reflects that the applicant entered the United States in May 2007 without inspection and remained in the United States until December 2010, when she voluntarily departed. The AAO

finds that the applicant accrued unlawful presence of more than one year and because she is seeking admission within 10 years of her departure, she is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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 first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant and her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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,* 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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 record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

The applicant's 35 year-old spouse is a native of Mexico and lawful permanent resident of the United States since 1995. They have three children together whose ages are nine, four and two. The applicant's spouse states that he cannot live without the applicant and needs her for emotional support, to raise their children, and to maintain their household. Since the applicant and their children left the United States, the applicant's spouse states he feels desperate, frustrated, sad and depressed. He notes that he has never lived apart from the applicant for long periods of time and

needs her emotionally. He states that he cannot sleep when he thinks of his family in Mexico, especially because they lack food and other necessities, and they may be in danger due to the ongoing violence. The doctors who examined and treated the applicant's spouse indicate that he has anxiety due to the separation of their family. Dr. states that the applicant's spouse has problems sleeping and feels nervous. He is being treated for depression and anxiety with antidepressant medication. A prescription for Celexa was submitted as evidence.

The applicant's spouse also indicates that he is the source of their family's income. He states that he cannot maintain a household and raise their children without the applicant's help because he cannot afford to pay someone for child care, and he needs to work, though work is not always available. Documentation regarding the applicant's spouse's employment and wages indicates that he is a seasonal agricultural worker and receives payment based on the amount and type of crop he picks on a weekly basis. His average weekly income is approximately $380.00, or $1520.00 per month. He has been sending the applicant money and feels emotionally stressed supporting two households, especially because of a decline in work opportunities. A receipt of remittances indicates that applicant's spouse sent the applicant an average of $1412.00 monthly from April to November 2011. The applicant also submits evidence of utility bills in Mexico, as well as the applicant's spouse's expenses in the United States, including car payments and rent, which total $550.00 per month. Evidence of the applicant's spouse's expenses, including gas, credit card bills, insurance, and other miscellaneous expenses was also submitted.

The applicant's spouse fears for the safety and health of the applicant and their children in Mexico. He states that Mexico, and especially Michoacán where the applicant lives, is very violent. The applicant's spouse also worries about the health of the applicant and their children. Medical documentation of their children's' illnesses in Mexico caused by their unhealthy environment corroborates the applicant's spouse's stated concerns. The applicant's spouse states that he must send the applicant additional money to pay for their medical expenses. Photographs of the applicant's home in Mexico, showing dirt floors and cracked walls, were also submitted as evidence.

The AAO has considered cumulatively all assertions of separation-related hardship, including the emotional, psychological, and financial consequences of separation. The emotional impact of the applicant's departure on the applicant's spouse is not one that is typical given that the applicant's spouse is taking antidepressant medication to deal with his depression and anxiety. The financial impact of the applicant's separation is also extreme. The record indicates that the applicant's spouse functions at a zero balance or a loss each month after sending money to the applicant and their children for their necessities and also covering his own expenses. As a result, the applicant's separation is causing him significant financial strain. This coupled with emotional and psychological depression and anxiety that the applicant's spouse faces establishes that he suffers from extreme hardship due to their separation.

Addressing relocation, the applicant's spouse indicates that he has been a permanent resident of the United States since 1995, when he was 19 years-old. According to Dr. his psychiatrist, "All [the applicant's spouse's] family is here," including six brothers. The applicant

states that in Mexico they cannot support themselves. She notes that they have no health insurance in Mexico and cannot afford to take their children to a clinic.

The applicant and her spouse also fear for their lives and the lives of their children due to the violence in Mexico. The State Department warns that crime and violence are serious problems throughout the country and can occur anywhere. Their travel warning states that Transnational Criminal Organizations ("TCOs") engaged in a violent struggle to control drug-trafficking routes and other criminal activity, and U.S. citizens "should defer non-essential travel to the state of Michoacán . . . . Attacks on Mexican government officials, law enforcement and military personnel, and other incidents of TCO-related violence, have occurred throughout Michoacán." *See* U.S. Department of State, Bureau of Consular Affairs, Travel Warning, Mexico (Nov. 20, 2012), http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including his adjustment to a country in which he has not resided for 18 years; his family ties in the United States; loss of employment in the United States and economic considerations of living in Mexico; and the safety-related concerns in Michoacán, Mexico. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's spouse would suffer extreme hardship were he to relocate to Mexico to be with the applicant.

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 AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

> We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra,* is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens

> with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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).

Id. at 301.

The favorable factors in the present case include extreme hardship to the applicant's spouse as a result of the applicant's inadmissibility; the applicant's ties to her spouse, their children, and community; her good character as corroborated by letters from friends, neighbors and a health care provider; and her lack of a criminal record. The unfavorable factors are the applicant's immigration violations of entering without inspection, smuggling her daughter into the United States and unlawful presence. Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 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 and the application will be approved.

ORDER: The appeal is sustained.