

March ____, 2016

United States Citizenship and Immigration Services
Chicago, IL

Re: APPLICATION FOR PROVISIONAL WAIVER OF THE 3/10 YEAR BAR (INA §212(a)(9)(B)(v))

APPLICANT: SANL

PETITIONER: PRB

Dear Officer:

SANL (hereafter “Applicant”), hereby applies for Provisional Unlawful Presence Waiver based upon the above stated ground. Enclosed please find Form I-601A, the requisite filing fee of \$585 and biometrics of \$85, along with the following supporting documents.

<u>Forms</u>	<u>Description</u>
G-28	Notice of Appearance of Attorney for Applicant;
G-28	Notice of Appearance of Attorney for Petitioner;
I-601A	Application for Provisional Unlawful Presence Waiver;

TABLE OF EXHIBIT

<u>Exhibit</u>	<u>Description</u>
“1”	Declaration of U.S. Citizen Spouse, PRB;
“2”	Copy of Birth Certificate of Applicant and Petitioner;
“3”	Copy of Passport of Applicant and Petitioner;
“4”	Copy of Certificate of Marriage of Applicant and Petitioner;
“5”	Psychosocial Assessment Report of PRB;

- “6” Copy of Medical History of Petitioner;
- “7” Approval Notice for I-130 Immigrant Petition for Relative;
- “8” Copy of fee receipt of Immigrant Visa (IV) Application processing fee and Affidavit of Support (AOS) fee;
- “9” Copy of Monthly expenses of Applicant and Petitioner;
- “10” Copy of Agreement to rent or lease;
- “11” Copy of Bank Account and Insurance Details of Applicant and Petitioner; “12” Copy of Electricity Bill of Applicant and Petitioner;
- “13” Copy of Utility and Gas bill;
- “14” Income tax returns of Applicant and Petitioner;
- “15” Copy of Supporting Letters from Friends and Relatives;
- “16” Family Photographs;
- “17” Immigration Photographs of Applicant and Petitioner;
- “18” Copy of dissolution of marriage of Petitioner;
- “19” Copy of Criminal Charges against the Applicant;
- “20” Human Rights Watch – Mexico Country Summary 2015;
- “21” Amnesty International – Mexico Annual Report 2014-15;
- “22” U.S. Department of State – Mexico Travel Warning January 2016;
- “23” U.S. Department of State – Mexico 2014 Human Rights Report; and
- “24” Country information of Mexico website
- [\[https://travel.state.gov/content/passports/en/country/mexico.html\]](https://travel.state.gov/content/passports/en/country/mexico.html)

I.

STATEMENT OF FACTS

The Applicant, SANL was born in Santa Maria Huazolotitlan, Oax, Mexico on October 23, 1961. See, **Exhibit 2**. The Applicant entered the United States in March, 2004 without inspection. Since his arrival in March, 2004, the Applicant has not left United States.

The Applicant married the Petitioner- PRB in October 27, 2014. See, **Exhibit 4**. Currently the Applicant is residing in the United States with his spouse. The Approval Notice for I-130

Immigrant Petition for Relative has been approved on August 13, 2015 filed by the Petitioner. See, **Exhibit 7.**

Applicant has his U.S. citizen spouse in the United States and hereby applies for a Waiver of the 3/10 year bar because of the extreme hardship it would subject his U.S. citizen spouse should he not be allowed to return to the United States for 10 years.

Applicant also qualifies for state-side provisional unlawful presence waiver (Form I-601A). Applicant is precisely the immigrant family member they had in mind when the Department of Homeland Security proposed regulation making it possible for state-side provisional unlawful presence waiver.¹ Applicant's U.S. citizen spouse would suffer tremendous hardships if he were to apply for unlawful presence waiver abroad and have a prolonged separation from them. For that reason, Applicant seeks a state-side provisional waiver in hopes of having as short a separation from his family as possible.

II.

APPLICANT MEETS THE PROVISIONAL UNLAWFUL PRESENCE WAIVER REQUIREMENT UNDER 8 C.F.R.212.7(e)

The Applicant is eligible to apply for provisional unlawful presence waiver under 8 C.F.R. 212.7(e).

A. Applicant qualifies as an eligible alien for provisional unlawful presence waiver purposes-

(2)(i) USCIS may adjudicate application for a provisional unlawful presence waiver of inadmissibility based on section 212(a)(9)(B)(v) of the Act filed by the eligible aliens described in paragraph (e)(3) of the section.

(3)(i) is present in the United States at the time of filing the application unlawful presence waiver, and for biometrics collection at a USCIS ASC;

¹Provisional Unlawful Presence Waivers of Inadmissibility for Certain immediate Relatives, 78 FR 535, 536 (Jan.)

The Applicant is currently living in Beach Park, Illinois, United States with his U.S. citizen spouse. See, **Exhibit 11**. He will continue to be present in the United States for biometrics collection at an USCIS ASC.

(ii) Upon departure, would be inadmissible only under 212(a)(9)(B)(i) of the Act at the time of the immigration visa interview;

The Applicant does not have any other inadmissibility grounds. Upon departure, only inadmissibility ground that will trigger unlawful presence per 212(a)(9)(B)(i)(ii).

(iii) Qualifies as an immediate relative under section 201(b)(2)(A)(i) of the Act;

The Applicant qualifies as an immediate relative under section 201(b)(2)(A)(i) through his U.S. citizen spouse. See, **Exhibit 4**.

(iv) Is the beneficiary of an approved immediate relative petition;

The Applicant is the beneficiary of an immediate relative petition through his U.S. citizen spouse. See, **Exhibit 7**.

(v) Has a case pending with the Department of State based on the approved immediate relative petition and has paid the immigrant visa processing fee as evidenced by a State Department Visa Processing Fee Receipt;

The Applicant currently has a case pending with the Department of the through an approved I-130 petition. He has also paid the immigrant visa processing fee. See, **Exhibit 8**.

(vi) Will depart from the United States to obtain the immediate relative immigrant visa;

Upon the approval of the provisional waiver, the Applicant plans to depart the United States to Mexico so that he can obtain the immediate relative immigrant visa. However, if he is granted a

provisional waiver stateside he will follow the proper steps to obtain the immediate relative immigrant visa stateside.

(vii) Meets the requirements for a waiver provided in section 212(a)(9)(B)(v) of the Act, except the alien must show extreme hardship to his U.S. citizen spouse or parent.

The Petitioner will experience hardship if Applicant were to be barred from reentering the United States for 10 years. See, **Exhibit 1**.

B. Applicant is not an ineligible alien under 8 C.F.R. 212.7(e)(4).

An individual is deemed ineligible for a provisional unlawful presence waiver under 8 C.F.R. 212.7(e)(4) if:

(4) Ineligible Aliens. Notwithstanding paragraph (e)(3) of this section, an alien is ineligible for a provisional unlawful presence waiver under paragraph (e) of this section if:

(i) USCIS has reason to believe that the alien may be subject to grounds of inadmissibility other than unlawful presence under section 212(a)(9)(B)(i)(I) or (II) of the Act at the time of the of immigrant visas interview with the Department of State;

The Applicant does not have any other inadmissibility grounds other than 212(a)(9)(B)(i)(II). See the argument below

(ii) The alien is under the age of 17;

The Applicant is over the age of 17. He was born on October 28, 1961 which makes him 55 years old. See, **Exhibit 2**.

(iii) The alien does not have a case pending with the Department of State, based on the approved immediate relative petition, and has not paid the immigrant visa processing fee;

The Applicant does have a case pending with the Department of State and has paid the immigrant visa fee. See, **Exhibit 8**.

(vi) The Department of State initially acted to schedule the immigrant visa interview prior to January 3, 2013 for the approved immediate relative petition on which the provisional unlawful presence is based, even if the interview has since been cancelled or rescheduled after January 3, 2013;

The Department of State has not scheduled the immigrant visa interview prior to January 3, 2013. The immediate relative petition was approved on [August 13, 2015]. See, **Exhibit 7**.

(v) The alien is in removal proceeding, unless the removal proceeding are administratively closed and not been recalendered at the time of filing the Form-106A;

The Applicant is not in currently in removal proceedings. Moreover, the Applicant has never been in removal proceedings.

(vi) The alien is subject to a final order of removal issued under section 217,235,238, or 240 of the Act(pre-April 2,1997), or any other provision of law (including an absentia removal order under section 240(b)(5) of the Act;

The Applicant is not subject to a final order of removal or a final order of exclusion or deportation.

(vii) The alien is in removal proceeding, unless the removal order under section 241(a)(5) of the Act;

The Applicant does not have a prior order; therefore, he is not subject to reinstatement of such order.

(viii) The alien has a pending application with USCIS for lawful permanent resident status.

The Applicant already has an approved I-130 Immigrant Petition for Relative. See, **Exhibit 7**.

If the Applicant is found to be eligible for a provisional unlawful presence waiver, he can apply for the 3/10 year bar waiver state-side prior to leaving the United States for an immigrant visa interview. Therefore, the Applicant requests you review of the 3/10 year bar waiver through a provisional unlawful presence waiver state-side.

III.

THE APPLICANT APPLIES FOR WAIVER OF INADMISSIBILITY BASED UPON SHOWING OF EXTREME HARDSHIP TO U.S. CITIZEN SPOUSE

1. INADMISSIBILITY UNDER THE 10-YEAR BAR OF INA § 212(a)(9)(B)(i).

The Applicant may be inadmissible under INA § 212(a) (9) (B) (i) which states in pertinent part:

(B)-ALIENS UNLAWFULLY PRESENT

(i)-In general-Any alien (other than an alien lawfully admitted for permanent residence) who-

(I)-was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of such alien's departure or removal, or

(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 Act also provides for a waiver of this ground of inadmissibility under INA § 212(a)(9)(B)(i), 8 U.S.C. § 1182(a)(9)(B)(i).

(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 [emphasis added].

2. EXTREME HARDSHIP TO THE U.S. CITIZEN SPOUSE WILL RESULT UNLESS THE APPLICATION FOR A WAIVER OF THE 10-YEAR BAR OF INADMISSIBILITY IS GRANTED.

As discussed supra, the unlawful presence basis of inadmissibility may be waived for the spouse, son, or daughter of a U.S. citizen or lawful permanent resident if extreme hardship would otherwise result to the qualifying relative (e.g. the alien's U.S. citizen or lawful permanent resident spouse or parent).

Courts have long recognized the "importance and centrality of the family in American life" as it is "firmly established both in our traditions and in our jurisprudence."² In fact, "the most important single factor may be the separation of the alien from family living in the United States."³ Moreover, there is little doubt that Congress provided such waivers under INA § 212 for the primary purpose of preserving family unity.⁴ And, while the term itself is not statutorily defined for the purpose of this waiver, extreme hardship as it is defined and used in other context is certainly instructive.⁵

The elements for establishing extreme hardship to a qualifying relative are dependent upon the facts and circumstances of each case.⁶ Such elements may include, but are not limited to, the following: (1) the presence of a lawful permanent resident or United States citizen spouse or parent in this country; (2) the qualifying relative's family ties outside the United States; (3) the conditions

²*Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987) (citing *Moore v. City of E. Cleveland*, 431 U.S. 494, 503, 97 S. Ct. 1932, 1938, 52 L. Ed. 2d 531 (1977) ("the Constitution protects the sanctity of the family precisely because it is deeply rooted in the Nation's history and tradition."))

³*Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983). See also *United States v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000)("[t]he existence of family ties in the United States is the most important factor in determining hardship.")

⁴ See *Matter of Lopez-Monzon*, 17 I. & N. Dec. 280 (Jan. 4, 1979) ("The intent of Congress in adding this provision of law [§212], which is evident from its language, was to provide for the unification of families, thereby avoiding the hardship of separation."; *In re Delia Larzarte Valverde*, 21 I. & N. Dec. 214 (February 9, 1996)("[o]ne of the most basic purposes of the Act - family unity." (Rosenberg, Holmes and Guendelsberger, concurring)).

⁵ See, e.g., *Matter of Pilch*, 21 I. & N. Dec. 627, 17 Immigr. Rep. B1-11 (BIA 1996) ("extreme hardship" is not a definable term, and must be judged on a case by case basis); *Matter of O-J-O-*, 21 I. & N. Dec. 381, 16 Immigr. Rep. B1-101 (BIA 1996) (nine factors listed in *Matter of Anderson*, 16 I. & N. Dec. 596 (BIA 1978), should be evaluated in suspension proceedings to see whether the economic and social hardships take the case beyond those "ordinarily" associated with deportation or removal).

⁶*Matter of Cervantes-Gonzalez*, 22 I. & N. Dec. 560, 19 Immigr. Rep. B1-405 (BIA 1999).

in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; (4) the financial impact of departure from this country; and (5) significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.⁷ "[T]he existence of family ties in the United States is the most important factor in determining hardship."⁸ Also, the Attorney General has discretion "to grant a waiver if denial of admission would result in extreme hardship to the Applicant's citizen or lawful resident spouse, parents, and children."⁹

A. Extreme hardship would result to the U.S. citizen spouse should he be forced to uproot the family and relocate to Mexico to be with his spouse.

The Petitioner would be facing several hardships if chooses to relocate along with the Applicant to Mexico. The hardships are covered as under-

1. Medical hardships-

The Petitioner has been suffering from weight and emotional issues most of his life. The Psychosocial Assessment Report by Nora B. Guini, LCPC states that, "*Paul is a 68 years old obese man who has struggled with weight and emotional issues for most of his life... Paul is unable to bend, carry weight, stand on his feet for very long, or lift his right arm... He suffers from varicose veins, arthritis and colitis. He has not seen physician in years... He requires complete physical examination and treatment for his chronic medical conditions. He will benefit from psychotherapy to become more in touch with his feelings and learn how to better address them*". In case the couple has to relocate to Mexico this treatment would hamper and that will be a severe hardship given his medical record. See, **Exhibit 5.**

In a Medical report of Dr. Jonathan Haigh, Back-2-Health, Inc., 2007, Petitioner had complained about an accident that gave him right shoulder injuries. He also had got treated

⁷*Id.* See also, *Jong Ha Wang v. INS*, 450 U.S. 139 (1981); *Gutierrez-Centeno v. INS*, 99 F.3d 1529 (9th Cir. 1996); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir.1994); *Matter of Pilch*, 21 I. & N. Dec. 627 (BIA 1996).

⁸*United States v. Quintanilla*, 2011 U.S. Dist. LEXIS 110625 (N.D. Cal. Sept. 27, 2011) See also, *United States v. Arrieta*, 224 F.3d 1076 (9th Cir. Cal. 2000)

⁹*Rivera-Peraza v. Holder*, 684 F.3d 906 (9th Cir. 2012)

for one year prior to this incident from the same Clinic for myofascial pain, arthritis, dislocated joints and headaches. He suffers from for right shoulder pain, neck pain, low back pain and bilateral hip pain treatment as per the Report. The Doctor in the Report states, “*I do not foresee any latent problems developing with this case as long as Mr. Baker maintains his care at a maintenance level frequency of an as needed basis*”. See, **Exhibit 6.**

Relocating to Mexico, thus, may crop up or aggravate these problems. It would then be very difficult for Petitioner to cope up with the physical problems at this age without consulting a practitioner who already knows his history. Added to that, Petitioner will not have access to medical care in Mexico. Petitioner would lose Medicare and present medication. Also, there are sufficient reasons to believe that there aren't enough medical resources in Mexico. That would cause the Petitioner extreme hardships. Petitioner would lose future benefits that he should be receiving such as Social Security. If he decides to leave the United States and live in Mexico, he would be giving up on my life.

Moreover, there are quite a few other unfriendly living conditions in terms of health. As per website see, **Exhibit 23.** “In many areas in Mexico, tap water is not potable.” Also, the diseases like Zika virus, chikungunya and dengue fever that are becoming more frequent in the area. See *Mendez v. Holder*, 566 F.3d 316, 322 (2d Cir. 2009) (“Petitioner's daughter suffers from severe asthma. Petitioner testified that she has about 25 asthma attacks a year and that her condition requires the use of a home nebulizer as well as an inhaler. She also requires regular visits to the emergency room for serious attacks.... Petitioner's son was diagnosed with Grade II Vesicoureteral Reflux. This disease causes urine to reflux from the bladder back [**5] to the kidneys and liver, causing staph infections, scarring, and tissue damage. Ultimately, the condition can lead to kidney or liver failure.”). See *Matter of Recinas*, 23 I&N Dec. 467, 470 (BIA 2002) (BIA considered that the noncitizen depended on her legal permanent resident mother to assist her in the care of her U.S. citizen children).

2. Financial hardships-

Petitioner and Applicant have an established catering business in Illinois. Petitioner in his Declaration has stated that, “*He is an established businessman for over 30 years. There are many people that depend on us to cater their functions, weddings, birthdays, anniversaries, etc.*” If the Petitioner along with Applicant have to relocate to Mexico, the couple would face lot of financial difficulties by losing their financial income from all clients. It would not be easy to settle a business at this age. The establishment of a new business cannot

replace with the 30 years of catering business and the clients and contacts developed at the current place of business. See, **Exhibit 1**.

Petitioner and Applicant also run a dog grooming business run primarily by the Applicant. The couple would be losing this source of income as well. The couple will be left in a sorry condition to meet their day-to-day needs to run a family. This would leave them with financial inadequacies that will be difficult to cope with. See, **Exhibit 1**.

Also, Petitioner's daughter- Ginger Matovich works in the catering business. Ginger Matovich in her Declaration states that, "*If Paul were to have to leave to join Simon in Mexico we would have to close both businesses, I would lose my job, and my daughter would miss the opportunity to grow up with her Grandfather.*" See, **Exhibit 15**. See *Tukhowinich v. INS*, 64 F.3d 460, 464 (9th Cir. 1995) ("Because the loss of financially comparable employment would create not only an economic hardship for Ms. Tukhowinich but would severely frustrate what she regards as the overriding mission in her life-to provide for her parents and siblings-we think the BIA should have considered the implications of her economic loss."). See *Matter of Cervante-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) at 566. (BIA noted that quality of life factors were relevant to the extreme hardship inquiry).

Because of the poor economic conditions in Mexico and difficulty in establishing business would leave the Petitioner and Applicant with great financial hardship in terms of making a living and provide themselves.

3. Economic hardships-

Petitioner and Applicant run a catering business and dog breeding business together in Illinois. Petitioner in his Declaration states that, "*We have over 2000 customers who come back to us on a regular basis. They depend on our business to take care of their needs for their pets.*" This shows that the Petitioner and Applicant will lose their customers and the income that comes through them for this business as well. It will be difficult for the couple to establish this income and resources if they relocate to Mexico. See, **Exhibit 1**.

Petitioner and Applicant through both businesses have developed lot of customers and clients. They would be losing these potential customers that help them raise good amount of money to provide their family. See *Gutierrez-Centeno v. INS*, 99 F.3d 1529, 1534 (9th Cir. 1996) ("Gutierrez and her family have had a history of conflict with the Sandinistas. In light of the political instability in Nicaragua and the power which the Sandinistas continued to wield after the election of the Chamorro government, the political situation in Nicaragua is also a factor that should have been considered. See *In re O-J-O-*, 21 I&N Dec. 381 (BIA 1996), at 5 ('In light of the respondent's family's history of conflict with the Sandinistas, the current political situation in Nicaragua should be factored into the hardship assessment.');" *Blanco v. INS*, 68 F.3d 642, 646 (2d Cir. 1995) ("incidents of violence that have been and would be directed at her in El Salvador. Her affidavit in support recounted the killing of her common-law husband, her father, and her uncle; the murder of a neighbor; threats against her by guerrillas; injury to her child from a bomb blast outside her home; and child kidnapping from a school attended by one of her children. This evidence was relevant to a claim of hardship more personally directed and more severe than the claim that might be made by any deportee to such a strife-torn nation."). See **Exhibit 19-24**.

4. Social hardships-

Petitioner has lived in the present area of residence for long. Petitioner in his Declaration states that, "*I am able to get around well in this area because I have lived here for many years. We both (Petitioner and Applicant) have many friends in the area. I know the local places to shop as well as working in this area because I have lived here for many years.*" See, **Exhibit 1**.

If the couple has to shift to Mexico, they will be left out all alone there to cope up with the day-to-day living. Petitioner will lose the present social contacts and relationships developed in the neighborhood. They will face social hardships. Petitioner has lived in the United States since birth till date and has a citizenship. He barely knows anybody in Mexico and is not familiar with people, place and culture. It will, hence, be difficult for the Petitioner at this age to adjust with the new environment.

Another biggest barrier could be that Petitioner knows very little Spanish and that would make living and adapting the Mexican culture near to impossible given that Petitioner is United States citizen. Petitioner is accustomed to American Culture and living in Mexico will be a mental burden.

5. Psychological hardships-

Petitioner has lot of psychological issues relating to his childhood, foster parents bringing-up history, traumatic adolescence, along with physical problems along with other psychological problems. Petitioner is now dealing with catastrophic fear with regards to Applicant's denial of waiver of inadmissibility.

The Psychosocial Evaluation Report states that, "*It is in the best interest of Paul and Simon to live together within union in the United State where they have their home, businesses, family and where their socioemotional, financial and medical needs can be met.*" See, **Exhibit 5.**

If Petitioner has to move along with the Applicant to Mexico, Petitioner would have to live a life without his daughter and granddaughter. Petitioner wishes to live the last years of his life with his whole family that includes the Applicant, Petitioner's daughter and granddaughter. If the couple has to move to Mexico they will not be able to spend time together with the whole family.

Mexico is considered to be a highly undesirable country to live due to its appalling social, economic and political conditions. As such, it would be highly unlikely that either the Petitioner or the Applicant would be able to run successful business in a way so as to support themselves in Mexico. This would cause tension, trauma and mental stress to the Petitioner and Applicant. Petitioner already has psychological issues and medical condition relating to stress. It is thus suitable and advisable for the Petitioner to be in United States and not move Mexico.

6. Safety hardships-

Petitioner lives with the Applicant, his daughter (Ginger), and granddaughter (Hannah). In the event of an emergency or a health problem with Petitioner and Applicant, Ginger is able to go and help them.

Petitioner in his Declaration has stated that, *“My daughter is my only living relative other than Simon. She comes over often to check on us and make sure there is nothing that we might need.”* Petitioner’s daughter is his only relative who is capable to go help in case of medical emergency. See, **Exhibit 1**.

If the couple of moves to Mexico, there would be lot of safety and security issues as they would be left alone there without any relative to attend at beck and call which ultimately risks the Petitioner’s life.

Apart from the personal issues regarding safety, crime and violence affect many parts of Mexico, urban and rural. Crime in Mexico continues to occur at a high rate and can be violent. Street crime, ranging from pick pocketing to armed robbery, is a serious problem in most major cities. Carjacking is also common. Rates of kidnappings and extortions in parts of Mexico have risen sharply in recent years, driven largely by violence associated with transnational criminal groups and increasingly smaller street gangs. See, **Exhibit 24**.

Consequently, the qualifying relative for this Waiver would also suffer immeasurably in Mexico in light of the country’s bleak economy, feeble education standards, and impoverished living conditions.

B. Extreme hardship would result to the U.S. citizen spouse if he were to remain in United States while his husband (the Applicant) is forced to relocate to Mexico.

The Petitioner would be facing similar hardships if he chooses to stay in the U.S. while the Applicant is forced to relocate to Mexico. The hardships are covered as under:

1. Psychological Hardships:

The Petitioner states that he loves Applicant with all his heart and if Applicant is sent back to Mexico Petitioner will suffer emotionally, financially and psychologically. His family would be torn apart. The Psychosocial Assessment Report mentions that, "*The Petitioner was a non-demonstrative person prior to Simon entering his life.*" Petitioner states in the same Report that, "*I am much more caring and demonstrative about my feelings now. I feel better about myself; I am truly learning from Simon.*" See, **Exhibit 5**. It highlights emotional dependency of the Petitioner on Applicant.

Petitioner is undergoing tremendous stress as the Applicant's immigration case is moving forward. The thought of being separated from the Petitioner, who is the fundamental support person and partner in his life, causes him anxiety and frustration. This too has been admitted in the Report. Given this level of dependency it will be highly stressful for Petitioner to live life with the Applicant.

Petitioner in his Declaration has stated that, "*We have been together a long time and if he were not in my life and here with me I don't know what I would do. It would be a great void in my life. Life would be much more difficult and I would have much sadness in my life. I find it difficult to even remember what it was like we were not there for each other. I just cannot list all of the things he brings to my life. My hope is that when you look in to this you understand how important Simon is to me.*" See, **Exhibit 1**.

Petitioner further admits that, "*Simon is just the most wonderful thing that has happened for me in my life.*" The Declaration clearly implies that the Petitioner and Applicant are inseparable souls and that Petitioner would suffer tremendous emotional and psychological hardship if the Applicant is forced to relocate Mexico. See, **Exhibit 1**.

The Report clearly states that, "*If Paul's husband Simon Nava's waiver of inadmissibility is denied, immediate intervention is strongly recommended for Paul as he will very likely further decompensate and will experience extreme emotional hardship.*" See, **Exhibit 5**. See *Lam v. Holder*, 698 F.3d 529, 534 (7th Cir. 2012) ("Lam submitted a letter from his wife's psychologist, who stated that Ms. Lin suffered from 'severe' postpartum depression

and that she was 'truly psychologically unable to carefully for their children. Her psychologist also stated that Lam's removal would place Ms. Lin 'in extreme psychological distress.'"); *Ravancho v. INS*, 658 F.2d 69 (3d Cir. 1981) ("psychological trauma may be a relevant factor in determining whether a United States citizen child will suffer 'extreme hardship' within the statute.").

2. Medical Hardships:

Petitioner suffers from physical symptoms associated with anxiety; cramps in his legs, palpitations, shortness of breath, loose bowels, and abdominal pain. Petitioner also suffers from obesity most of his life. Petitioner has had lot of medical problems for past five years. The Psychosocial Report states that, "*Paul is unable to bend, carry weight, stand on his feet for very long, or lift his right arm. He suffers from varicose veins, arthritis and colitis.... Paul very much depends on Simon for help with dressing, standing up and carrying things.*" See, **Exhibit 5**. This implies that if the Petitioner and Applicant are separated, the Petitioner's health will be highly affected in a negative way.

Petitioner in his Declaration has stated that, "*I have some physical problems which he is very helpful with. There are times I have trouble getting up out of bed. He helps me get to a seated position.... He does all of my lifting because my balance is not very good sometimes.*" See, **Exhibit 1**. If Applicant is forced to relocate to Mexico, Petitioner will face all these physical limitations.

3. Economic Hardships:

The Petitioner is an established business man in the area for over 30 years. A lot of our customers depend on him and the Applicant to cater their functions, weddings, birthdays, anniversaries etc. Alongside, the Petitioner also helps his daughter raise her daughter. When he is busy with these things the Applicant helps out and is able to do more things which the Petitioner is unable to perform due to his age and health. The Petitioner also owns a dog grooming business, with 2000 regular customers and they depend on the Petitioner and the Applicant to take care of their needs. If the Applicant is forced to relocate to Mexico, the Petitioner will face extreme hardships in managing the clients and his

business. It is close to impossible to manage the businesses single handedly for the Petitioner. See, **Exhibit 1**.

Petitioner further states that, *“Simon is there all day taking care of the animals and I am able to focus on my business without having to worry about the dog grooming business. He handles all of the daily work load and as well as managing any employees and anything that may arise with the shop. He is a very important part of my life. He plays a big part in my catering business. He is very good in jumping in and helping when needed. He is very responsible with any tasks that are needed and does a great job. Many people have come up to me and told me that he is competent, hardworking and is friendly with them. He keeps the clients happy with our services.”*See, **Exhibit 1**.

The Petitioner depends on the Applicant in so many ways and the Applicant is always there to helping when needed. If the Applicant were to be sent back to Mexico, apart from the emotional distress of losing his dear companion, the Petitioner would also be suffering a tremendous setback in his business leading his to Economic and Financial hardships. The Petitioner depends on the Applicant for so many tasks due to his ill health.

4. Safety hardship:

Petitioner has lot of issues in terms of Applicant’s safety if he were forced to relocate Mexico. Petitioner has stated that, *“Simon’s trip to Ciudad Jaurez is highly distressing him. It is a dangerous place and Simon will be exposed to crime and corruption.”* Petitioner feels that it is in Applicant’s good health that he lives in the United States. Mexico in no way is safe for Applicant. See, **Exhibit 5**.

IV.

THE REVIEWING OFFICER HAS BEEN GIVEN SIGNIFICANT DISCRETION THROUGH § 212 OF THE ACT, TO GRANT OR DENY APPLICANTS REQUEST FOR A WAIVER OF INADMISSIBILITY

The language as utilized in the 10-year bar waiver (INA § 212(a)(9)(B)(v)) and the fraud waiver (§ 212(a)(6)(C)(i)) waiver focuses primarily on extreme hardship to the Applicant's qualifying

relatives. However, because the ultimate decision to grant or deny such waivers is entirely discretionary, it would stand to reason that the adjudicating officer may also consider hardship to the Applicant himself in addition to the above discussed factors.¹⁰

The Applicant hereby submits himself to the three factor balancing test employed in the context of advance permission to enter as a nonimmigrant pursuant to § 212(d)(3) of the Act,¹¹ as well as a cumulative analysis of hardship. The three-factor balancing test includes: (1) the risk of harm to society if the Applicant is admitted, (2) the seriousness of the Applicant's prior immigration or criminal violations, and (3) the nature of the Applicant's reasons for wishing to enter the United States. Meanwhile, the cumulative analysis test involves the extent to which hardship to the Applicant would translate into hardship upon the qualifying relatives¹²

The Exhibit 1, Declaration of the Applicant, shows that under the balancing test of the items discussed above, that there is further reason to grant this Waiver. The nature of the Applicant's desire to adjust status is quite basic and simple to remain united with his U.S. citizen spouse and family. As noted above, preservation of family unity should be accorded significant, if not predominant weight in such situations.

V.

ORDINARY HARDSHIPS MUST BE CONSIDERED IN THE AGGREGATE IN DETERMINING WHETHER EXTREME HARDSHIP EXISTS

The Applicant is eligible to seek a waiver of inadmissibility pursuant to INA Sec. 212(a)(9)(B)(v) in that the refusal of admission would result in extreme hardship to his U.S. citizen spouse.

¹⁰Cf. Matter of Gonzalez Recinas, 23 I. & N. Dec. 467 (BIA 2002) (in the context of cancellation of removal proceedings which involve the "exceptional and extremely unusual hardship" standard (which is a higher standard to meet than the mere "extreme hardship" involved here), it is acceptable to undertake a "'cumulative' analysis" or "assessment of hardship factors in their totality," meaning that "factors that relate only to the respondent may also be considered to the extent that they affect the potential level of hardship to . . . qualifying relatives.")

¹¹Matter of Hranka, 16 I. & N. Dec. 491 (BIA 1978).

¹²Id.

The standard for extreme hardship should not be confused with the much higher standard of outstanding and unusual hardship now required for cancellation of removal. The District Director must consider the entire range of relevant factors concerning hardship in their totality and determine whether the combination of factors results in hardships greater than those ordinarily associated with deportation. Matter of O-J-0, Int. Dec. 3280 (BIA 1996). In Jara-Navarrete v. INS, 813 F.2d 1340, 1343 (9111 Cir. 1986), the Ninth Circuit stressed that each relevant factor presented in a case, particularly harm to U.S. citizens, must be carefully and individually considered.

In A Matter of Chumpitzi, 16 I&N 629 (BIA 1978), the Board recognized relevant factors in determining extreme hardship to a qualifying relative, presence of lawful permanent resident of United States citizen family ties to the 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 to such countries; the financial impact of departure from this country; and finally, significant conditions of health.

The Board made it clear in that case that not all of these factors would be present in any given case. Id. The BIA in Matter of Cervantes-Gonzalez, 22 I&N 560 (BIA 1999), set out the following factors as relevant in determining whether or not extreme hardship exists: presence of a lawful permanent resident or U.S. citizen spouse of parent in the U.S.; the qualifying relatives' family ties in the United States and abroad; length of residence in the United States; conditions of health; conditions in the country where the qualifying relative would live; and the financial impact of leaving the U.S. What is unclear from the BIA's holding in that case, however, is whether these factors should be viewed as positive or negative factors and how much weight they should be given. For example, in that case, the U.S. citizen spouse had come to the U.S. as a small child and her entire immediate family lived in the U.S. as LPRs or U.S. citizens. She and her husband lived with her parents and were financially dependent on them. The Ninth Circuit, in US. v. Arrieta, 224 F.3d 1076, 1079 (9th Cir. 2000), held that the most important factor in evaluating hardship is the family ties in the U.S. In addition, a qualifying relative's poor financial status in the U.S. is not the same as poor financial status in Mexico

when the qualifying relative is able to live with and rely on parents in the U.S. but has no one on whom to rely in Mexico.

VI.
CONCLUSION

For the foregoing reasons, the Applicant prays that the application for Provisional Unlawful Presence Waiver be granted so as to avoid extreme hardship to his U.S. citizen spouse, PRB.

Please contact our law office at _____ should there be any questions regarding this matter.

Sincerely,
