

June 27, 2016

United States Citizenship and Immigration Services

Attn: I-601A

131 S. Dearborn, 3rd Floor

Chicago, IL 60603-5517

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

APPLICANT: [REDACTED]

PETITIONER: [REDACTED]

Dear Officer:

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

FORMS

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

TABLE OF EXHIBIT

<u>Exhibit</u>	<u>Description</u>
“1”	Declaration of Applicant and Petitioner;
“2”	Copy of Passport and Certificate of Naturalization of U.S. citizen spouse/ Petitioner;

- “3” Copy of Birth Certificate and Passport of Applicant;
- “4” Copy of Birth Certificate of Petitioner’s son;
- “5” Copy of Certificate of Marriage of Applicant and Petitioner;
- “6” Copy of Certificate of Divorce of Applicant and Petitioner;
- “7” Copy of Psychological Assessment Report of Petitioner;
- “8” Approval Notice for I-130 Immigrant Petition for Relative;
- “9” Income Tax Returns with W-2 Wage and Tax Statement of Applicant and Petitioner;
- “10” Copy of Joint Bank Account, Loan and Insurance details of Applicant and Petitioner;
- “11” Copy of Lease Agreement of Petitioner;
- “12” Copy of monthly and yearly expenses of Applicant and Petitioner;
- “13” Copy of Supporting Letters from Friends and Relatives;
- “14” Family Photographs;
- “15” U.S. Department of State – Mexico Travel Warning April 2016;
- “16” Country information website- [<https://travel.state.gov>];
- “17” Human Rights Watch – Mexico Country Summary 2016;
- “18” Amnesty International – Mexico Annual Report 2015-16; and
- “19” U.S. Department of State – Mexico 2015 Human Rights Report.

I.

STATEMENT OF FACTS

Applicant was born on [REDACTED] in La Paz, Mexico D.F., Mexico. See, **Exhibit 3**. Applicant married [REDACTED] (hereinafter “Petitioner”) on July 30, 2011 in Chicago, Illinois, United States. See, **Exhibit 5**. Petitioner is a United States citizen born on [REDACTED] in Distrito Federal, Mexico. Petitioner acquired citizenship through naturalization on [REDACTED]. See, **Exhibit 2**. Applicant and Petitioner were both divorcees prior to the present marriage. See, **Exhibit 6**. They live in Illinois together with Petitioner’s son- [REDACTED] who is a United States citizen. See, **Exhibit 4**.

Applicant entered the United States in [REDACTED] without inspection. Petitioner filed Form I-130 Petition for Alien Relative in [REDACTED] that got approved on September 5, 2014. See, **Exhibit**

8. Applicant is a responsible person who works at [REDACTED] and pays federal taxes. See, **Exhibit 9**. Petitioner and Applicant live in [REDACTED] United States. Petitioner pays the lease of the premises. See, **Exhibit 11**. Petitioner and Applicant also own joint Bank account and pay their monthly expenses and bills together. See, **Exhibit 10 and 12**. Applicant lives a humble and happy life with Petitioner. See, **Exhibit 14**. Petitioner and Applicant are responsible persons. See, **Exhibit 13**. They wish to live in the United States and hope that Applicant's immigration process go well. See, **Exhibit 1 and 2**.

Applicant 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. 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;

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

The Applicant is currently living in Schaumburg, Illinois, United States with his U.S. citizen spouse. 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 *under section 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 5**.

(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 8**.

(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 State through an approved I-130 petition. He has also paid the immigrant visa processing fee.

(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, expect the alien must show extreme hardship to his U.S. citizen spouse or parent.

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

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 [REDACTED] which makes him [REDACTED] years old. See, **Exhibit 3.**

(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.

(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 September 5, 2015. See, **Exhibit 8**.

(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 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 8**.

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.

Applicant came to the United States in February 2000. Applicant entered the United States without inspection. Applicant may be held inadmissible under the section based on the fact that Applicant lived in the United States under unlawful status. Thus, Applicant seeks a waiver under the section. See, *Infra*.

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

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).

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 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 United States citizen spouse should she be forced to uproot the family and relocate to Mexico to be with her spouse:

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

1. Medical hardships-

Petitioner in her declaration states that, "*I do not want to move Mexico for various reasons: The medical help in Mexico too is not adequate. I do not want to be a country where such basic necessities are scarce. I am a middle aged woman. I do get lot of physical problems time and again. Back pain, joint pain, headaches are few of them. Also my psychological treatment is half met. I have a tendency to get depressed because of my past experiences. I need that help. If I move with my husband to Mexico, my treatment will discontinue. That can cause of lot of problems.*" See, **Exhibit 1.**

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

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)

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 in her declaration states that, "*I do not want to move Mexico for various reasons: lack of employment opportunities in Mexico, lack of resources among [REDACTED] extended family, as well as limited educational opportunities for Fernando. My family's life can best be provided for here in the United States, since this is where we have already established strong roots and where my son has created an identity as an American.*" See, **Exhibit 1**.

Petitioner in her declaration states that, "*We will go from being a healthy and productive family of three, maintaining our finances and our family's needs, to a splintered family struggling to get by and suddenly dependent on a single mother of one. Without [REDACTED] emotional and physical help, I will not be able to buy house we want to buy, keep the care and all the other domestic bills we are paying now. My only child would take on the adult responsibilities without having his step-father around him, feeling pressure to assist and help his mother and this would shorten his adolescence without having the liberty to do what other high schoolers do.*" See, **Exhibit 1**.

See, *Tukhowinich v. INS*, 64 F. 3d 460, (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).

3. Psychological hardships-

The Psychological Assessment Report states that, “*Fernando can’t live out of the country due to his parent’s divorced condition and shared custody. [REDACTED] can’t abandon her son because he still needs her support emotionally, physically and economically. Therefore they cannot see themselves living in Mexico at this time.*” See, **Exhibit 7.**

4. Educational and Cultural hardships-

The Psychological Assessment Report states that, “*According to [REDACTED], her jobs and her immediate family take up all of her time and energy. Mrs. [REDACTED] worries over the lack of educational opportunities for her son in Mexico, and the great difficulty involved in having to adapt to a completely foreign culture, language, and country should they be forced to move in order to keep their family together.*” See, **Exhibit 7.**

5. Economic hardships-

The Psychological Assessment Report states that, “[REDACTED] stated that her economic stability would also be negatively impacted if she has to move since she won’t have the same salary and opportunities she has now. [REDACTED] is naturally responsible for part of the house/ car/ utility/ bills as well as the financial welfare of her son.” See, **Exhibit 7.**

Petitioner in her declaration states that, “*I want [REDACTED] to have good upbringing here in United States. In Mexico, our incomes will go down. That will create difficulties in meeting his needs leave apart ours. I do not want him to be exposed to that kind of life where he has to think before what to buy. At least our basic needs and a little above that is possible here in United States with both of us working. It would not be possible in Mexico.*” See, **Exhibit 1.**

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 15, 16, 17, 18 and 19.**

6. Social and Safety hardships:

Petitioner in her declaration states that, *"I do not want to move Mexico for various reasons:....The lack of safety and security in Mexico as compared to the States is another critical factor convincing the couple that ██████████ and his family must remain in the United States.... ██████████ is not ██████████'s biological father, but Fernando is closer emotionally like his own father. He calls ██████████ father and he respects and follows his instructions more than mine. And I am his biological mother. They have a great connection, and a father-son bond has developed over the years."* See, **Exhibit 1.**

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 she were to remain in United States while her husband (the Applicant) is forced to relocate to Mexico:

The Petitioner would be facing similar hardships if she chooses to live in the United States while the Applicant is forced to relocate to Mexico. The hardships are covered as under-

1. Medical hardships-

The Psychological Assessment Report states that, *"Mrs. ██████████ and her son ██████████ would undoubtedly suffer extreme emotional, psychological, and financial hardships in*

the event that their husband/ step-father is forcibly sent back to Mexico. This would most likely cause Mrs. [REDACTED]'s currently moderate ailments to degrade into critical conditions based on her current diagnosis of mild depression and high anxiety. Mrs. [REDACTED] meets the criteria for a diagnosis of high anxiety as well as Adjustment Disorder with Depressed mood, based on symptoms she's exhibited since the onset of the identified stressor of worrying about her husband's potentially damaging deportation to Mexico following the possible denial of Mr. [REDACTED]'s waiver of inadmissibility. Consistent with the diagnosis, these symptoms may intensify and diversify over time given prolonged exposure to the identified stressor." See, **Exhibit 7.**

2. Financial hardships-

The Psychological Assessment Report states that, "*Mrs. [REDACTED] stressed how much unnecessary hardship and instability would be caused as a direct result of her husband's waiver being denied, especially now that she has the opportunity to become more stable financially by helping her son with his education, buying their own house or apartment that they do not have because of her worry that she might not be able to pay all the fees by herself, and maintain the kind of family life she has always dreamt of having (a loving, close knit family with a caring man that protects her and her son....Mrs. [REDACTED] and her son [REDACTED] would undoubtedly suffer extreme emotional, psychological, and financial hardships in the event that their husband/ step-father is forcibly sent back to Mexico.*" See, **Exhibit 7.**

Petitioner in her declaration states that, "*Without [REDACTED]'s emotional and physical help, I will not be able to buy house we want to buy, keep the care and all the other domestic bills we are paying now.*" See, **Exhibit 1.**

3. Psychological hardships-

The Psychological Assessment Report states that, "*The Beck Depression Inventory Test confirmed the same diagnosis. Mrs. [REDACTED] admitted feeling concerned and overwhelmed whenever contemplating her husband's fate. Additional symptoms reported are as follows: difficulty focusing and a lack of concentration at work, feelings of helplessness and despondency and crying spells (which were directly observed in one session where Mrs. [REDACTED] spontaneously began sobbing as she felt totally*

overwhelmed and unprepared for all the responsibility that she would have to take on if her husband was taken away from her)... Mrs. ██████ presents symptoms of mild depression as well as anxiety. Mr. ██████'s diagnosis reflects Generalized Anxiety Disorder given his precarious and unpredictable legal status and uncertain future with his family. Mr. ██████'s test reflected the normal ups and downs of life, which differs from that of Mrs. ██████'s in that she exhibits mild to moderate depression and anxiety issues. Mrs. ██████ admitted experiencing intense worry, spontaneous crying spells, acute pangs of sadness, as well as difficulty concentrating on a daily basis. The couple's protracted fear of losing each other as well as the life they have so carefully created together is unremitting in its torment. They suffer moments during which they cannot stop thinking about ██████'s impending legal outcome... Mrs. ██████ was devastated when she first realized that she could be separated from her husband. She is terrified of her family being separated from her husband who is vital for her to keep the dreams of buying a house and maintaining financial stability.

*Mr. ██████ presents extreme issues related to separation anxiety and loss, and denial of him remaining in the United States would definitely exacerbate these conditions and cause him intense emotional and physical hardship as well as his wife who is the citizen." See, **Exhibit 7.***

*Petitioner in her declaration states that, "It is even more painful for me to consider my husband having to relocate to Mexico without me and my child, who can't live in other country because his mother is sharing custody with his biological father, who lives in Chicago. If I were to live without ██████, our life would dramatically change for me and my son.... Without my husband, ██████, here with me I will have no direction and all the goals that we accomplished and the ones we are still working towards will become broken dreams, and what was a bright and vibrant future will merely become an unattainable, unstable tomorrow.... ██████ was the man who gave me the support I needed. I never felt lonely throughout the process of going to work and being a single mother because ██████ was always there, comforting and supporting me.... We lived together for 8 years before we got married five years ago. We have now been together for almost 13 years. Living separately from him is something now I can barely think of or manage." See, **Exhibit 1.***

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.").

4. Related severe emotional hardships on Petitioner and Applicant's son-

The Psychological Assessment Report states that, "With regards to Mrs. [REDACTED] son [REDACTED], the separation from the person he considers his father could create emotional instability." See, **Exhibit 7**.

Petitioner in her declaration states that, "I met [REDACTED] about 13 years ago, my only child [REDACTED] was 3 years old and now he is 16 years old. [REDACTED] is not [REDACTED] biological father, but [REDACTED] is closer emotionally like his own father. He calls [REDACTED] father and he respects and follows his instructions more than mine. And I am his biological mother. They have a great connection, and a father-son bond has developed over the years... [REDACTED] is not [REDACTED]'s biological father, but [REDACTED] is closer emotionally like his own father. He calls [REDACTED] father and he respects and follows his instructions more than mine. And I am his biological mother. They have a great connection, and a father-son bond has developed over the years." See, **Exhibit 1**.

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 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.

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

¹⁰ Cf. *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.")

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

¹² *Id.*

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 *Matter of Chumpitzai*, 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- [REDACTED] prays that the application for Provisional Waiver of The 3/10 Year Bar *INA §212(A)(9)(B)(v)* be granted so as to avoid extreme hardship to his U.S. citizen spouse, [REDACTED].

Please contact our law office at 773-847-8982 should there be any questions regarding this matter.

Sincerely,

[REDACTED]

Attorney at Law

[REDACTED]