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

U.S. Citizenship and Immigration Services

(b)(6)

Date: JUL 0 8 2013 Office: BLOOMINGTON FILE:

IN RE:

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

ON BEHALF OF APPLICANT:

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Bloomington, Minnesota, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying application denied.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for unlawful presence of one year or more, and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. He is the beneficiary of an approved Petition for Alien Relative (Form I-130), and seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director,* September 9, 2011. On appeal, the AAO found that, while the applicant had established a qualifying relative would suffer extreme hardship by virtue of relocation, he had failed to show that extreme hardship would be imposed on a qualifying relative by separation from the applicant. *Decision of the AAO,* December 5, 2012.

In support of the motion, the applicant's counsel provides a brief and several previously unavailable documents, including the updated statement of the applicant's wife; medical records and information; financial information, including paystubs, savings and checking account statements, an updated expense list with receipts and utility bills; and a bill of sale for personal property. The record includes the supporting documents submitted with the Form I-601, the appeal of the waiver denial, and the current motion. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
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> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
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> . . . .

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of admission to such immigrant

alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien…

The record reflects that the applicant was unlawfully present in the United States from June 15, 1996, when he entered using the passport and visa of another person, until January 2002, when he departed for Mexico.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part,

> Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i)(1) of the Act provides:

> The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien […].

The record shows the field office director found the applicant inadmissible for procuring admission to the United States several times between 1988 and 1996 by presenting a passport and visa belonging to his brother and, on appeal, the AAO likewise found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship 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,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Id. The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made 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. INS.*, 138 F.3d 1292, 1293 (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.

Previously, the AAO concluded that the applicant had established his wife would suffer extreme hardship if she relocated to Mexico. We do not revisit that finding, but rather examine the evidence in the record to determine whether the applicant has established that his absence would impose extreme hardship on a qualifying relative. After revisiting that finding in view of the new evidence submitted by the applicant, we find the documentary evidence offered with the motion insufficient to change our prior conclusion in this case.

Regarding financial hardship, the record reflects that the applicant's wife is the couple's primary breadwinner whose documented income as a nurse represents about 75% of household income.[1] There is no evidence that she would lose this income if the applicant left the country, nor does the record show he would be unable to find employment to support himself abroad. Counsel's claim that the applicant's wife is the sole source of financial assistance for her mother is unsubstantiated -- we noted in our prior decision that there was no evidence for the claim she supports her mother since her father is not paying alimony, *see AAO,* December 5, 2012 -- and the mother has another adult daughter who has not been shown to be unable to help. We note that the applicant's mother-in-law is not a qualifying relative and there is no evidence she lives with the applicant and his wife. Claims that the applicant and his wife borrowed money from the applicant's brother to finance a home purchase are supported neither by proof of the brother's loan nor evidence of a mortgage. Although medical records confirm the qualifying relative's pregnancy, there is no evidence showing the impact of this condition on her earnings or her schedule. The record does not reflect any diminution in her income or show that she missed work due to pregnancy, but does show that she has employer-provided medical benefits. There is no indication that the applicant's wife has explored childcare costs or work scheduling that would allow her to manage the demands of being a working parent. While the AAO is sensitive to the work-life changes that parenthood brings, the situation of being a single parent is a common or typical consequence of inadmissibility and removal. The evidence does not establish that the applicant's absence will result in his wife's inability to support herself or pay her debts.

Claims regarding potential physical and emotional hardship due to separation are largely undocumented. Although medical records confirm the applicant's wife was pregnant in December 2012 and had previously been diagnosed with endometriosis and ovarian cysts, as claimed, there is no indication that her treatment provider prescribed any particular regimen due to these conditions and no showing that the applicant served in a caretaking capacity because of them. And, while the record shows that qualifying relative endured a childhood in which her father was convicted of making terroristic threats against her mother, as well as her parents' divorce, there is no evidence supporting her claim to be suffering from post-traumatic stress disorder (PTSD), depression, or anxiety as a result. There is documentation that the applicant's wife was taking medication for depression, but there is no diagnosis or detailed explanation from a physician or mental health professional concerning her condition. We previously observed that "[t]he record does not contain supporting documentation from a medical practitioner regarding the qualifying relative's PTSD diagnosis, ongoing treatment and prognosis," *AAO,* December 5, 2012, and it thus does not show how her hardship would rise beyond what would normally be expected upon the separation of immediate family members. As with the financial hardship claim, despite evidence of her pregnancy, there is no documentary evidence confirming that she is experiencing any emotional or physical hardship beyond the common and typical result of being separated from a family member. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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[1] The income listed on the expense list provided by counsel, claiming the applicant contributes about 45% of household earnings, is unsubstantiated.

For all these reasons, while the AAO recognizes that the applicant's absence will cause emotional pain to his wife, there is insufficient evidence that the cumulative effect of the emotional and financial hardships to her due to her husband's inadmissibility will rise to the level of extreme. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer hardship beyond those problems normally associated with family separation.

As noted in our prior decision, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's wife's situation as an expectant mother, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law. Having again found the applicant statutorily ineligible for relief under the Act, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The waiver application remains denied.