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

U.S. Citizenship and Immigration Services

[redacted]

H6

DATE: DEC 1 8 2012 OFFICE: CIUDAD JUAREZ, MEXICO File: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest the finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(9)(B)(v), in order to reside in the United States with her husband and their children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated July 27, 2010.

On appeal, the applicant's spouse asserts that the additional documentary evidence submitted in support of the waiver application demonstrates that his family will suffer extreme hardship because of the applicant's inadmissibility. *See Notice of Appeal or Motion* (Form I-290B), dated August 23, 2010.

The record includes, but is not limited to: letters of support; identity, medical, and financial documents; and photographs.[1] The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (B) Aliens Unlawfully Present.-
>
> (i) In General.- Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> ...

[1] The AAO notes that the record includes an incomplete copy of a Spanish-language document. Although the record includes a translation of this document to the English language as required by 8 C.F.R. § 103.2(b)(3), the AAO must give diminished weight to this document as it is only a partial copy of the original.

> (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.
>
> ...
>
> (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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection by immigration officials about October 30, 2005, and remained until October 16, 2008, when she timely departed pursuant to a voluntary departure order issued by the Immigration Judge. The applicant accrued unlawful presence from October 30, 2005 until October 16, 2008; a period in excess of one year. As the applicant is seeking admission within 10 years of departure, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only demonstrated qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (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 U.S. citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

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

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. I.N.S.*, 138 F.3d 1292, 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.

The applicant contends that her spouse has suffered extreme emotional and financial hardship in her absence as: his depression has worsened; they would like to have more children, but the stress from their separation resulted in a miscarriage on April 3, 2009; and he has to support two households. She also indicates that her spouse and her son are very close to one another and that her spouse took care of her son in her absence for about one year. The applicant's spouse further indicates that: it is his right to have the applicant and her son rejoin him and his daughter in the United States as their separation has been very hard and they need the other half of their family back; he has been very depressed since his separation from the applicant and her son as he has raised the son for a long time and he loves him as if he were his own child; he and the applicant are planning on having more

children; the applicant has served in the role of his daughter's mother as the biological mother is in Mexico; and money has been "very tight" as he has been supporting two households. The applicant's spouse also indicates that he has provided various documentation, demonstrating his financial obligations, his mother's physical condition, the applicant's miscarriage, and his overall feelings of frustration for having to prove extreme hardship as his family is "800 miles away, in a different country."

Although the applicant's spouse may experience some hardship in the applicant's absence, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record establishes that the applicant's spouse has experienced headaches, insomnia, and hyperlipidemia, and that [redacted] PA-C, MPAS, prescribed him Celebrex and Zoloft as well as referred him to a neurologist on December 15, 2009. The record also demonstrates that [redacted] has indicated that the applicant's spouse's "depression seems to be worse." *Medical Report*, dated December 15, 2009. However, the record does not contain any discussion concerning the evaluative method used to make a diagnosis of depression or any indication that the applicant's participation would be advantageous in the treatment of her spouse's physical and mental health conditions. Moreover, the AAO notes that [redacted] report is dated almost eight months prior to the filing of the applicant's appeal, and the record does not include any evidence of the applicant's spouse's follow-up concerning the referral to a neurologist. Absent an explanation in plain language from the treating physician and mental health professional of the current nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical or mental health condition or the treatment needed. Additionally, the record does not include any evidence of the applicant's spouse's daughter's mental health. 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)).

And, although the record includes evidence of some of the applicant's spouse's financial obligations and his remittances to Mexico, the AAO notes that the most recent financial transaction is dated November 2009, almost one year prior to the applicant's submission of her appeal. Moreover, the record does not include any specific evidence of labor or employment conditions in Mexico and the applicant's inability to contribute to the maintenance of her and her spouse's households. The AAO is thus unable to conclude that the applicant's spouse's hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship that the applicant's spouse may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

The applicant contends that her spouse and his daughter would experience extreme hardship if they relocated to Mexico to be with her and her son as: her spouse does not speak or write in Spanish; he would not make enough money to pay his outstanding debt; he would lose his house in the United

States; he is currently scheduled to take GED courses so they can have a better quality of life; his mother has experienced an emotional breakdown because of her depression and recently attempted suicide; his parents are getting older and will feel abandoned if he leaves the United States; and his daughter's biological mother does not give permission for the daughter to live in Mexico given its violence and economy. The applicant's spouse further indicates that: his quality of life would be lower; he does not believe that he would be able to find employment or pursue his education in Mexico given his lack of Spanish-speaking abilities; his daughter also does not speak or write in Spanish, and that she needs to complete her education in the United States as the quality of education in Mexico is lower; he fears for the applicant and her son's personal safety given the violence and shooting that the applicant has already experienced; and it would be tragic if he were unavailable to help his parents if anything ever happened to them.

The record is sufficient to establish that the applicant's spouse would suffer hardship if he were to relocate to Mexico. The record demonstrates that the applicant has continuously resided in the United States and maintains a close relationship with his parents, who live in Nevada. Additionally, the U.S. Department of State has issued a Travel Warning for Torreón, Coahuila, Mexico, where the applicant currently resides: "The State of Coahuila continues to experience high rates of violent crimes and narcotics-related murders. [Transnational Criminal Organizations (TCOs)] continue to compete for territory and coveted border crossings to the United States. In September 2012, more than 100 prisoners escaped from a prison in Piedras Negras. The majority of these prisoners are known or suspected to be connected with TCO activity and believed involved in a series of violent incidents since the escape. The cities of Torreón and Saltillo have seen an increase of violent crimes, including murder, kidnapping, and armed carjacking." *Travel Warning, Mexico,* issued November 20, 2012. In the aggregate, the AAO finds that the applicant's spouse would suffer extreme hardship if he were to relocate to Mexico.

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. In re Pilch*, 21 I&N Dec. at 632-33. 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.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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

ORDER: The appeal is dismissed.