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

[redacted]

H6

DATE: DEC 2 0 2012 Office: TUCSON, AZ FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

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 more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child.

In a decision, dated August 2, 2011, the field office director found that the applicant had failed to establish that her U.S. citizen spouse would suffer extreme hardship as a result of her inadmissibility.

In a letter on appeal, the applicant's spouse states that he did not have the correct information when he first filed his wife's waiver application, that he would like to submit that information on appeal, and that he, his wife, and his son, should be able to live together as a family unit.[1]

Section 212(a)(9)of the Act provides:

> (B) ALIENS UNLAWFULLY PRESENT.-
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> > (i) In general- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> > > (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 the date 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.
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> > (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the

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[1] The AAO notes that the applicant's Notice of Appeal to the AAO (Form I-290B), dated August 23, 2011, makes reference to a representing attorney. However, the record does not include a Form G-28 or information on any attorney representing the applicant.

> Attorney General or is present in the United States without being admitted or paroled.
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> ...
>
> (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.

In the present case, the record reflects that the applicant entered the United States on May 1, 2001, May 5, 2006, June 13, 2007, and May 1, 2008 as a nonimmigrant visitor with a valid Border Crossing Card issued to her in 2001. The record indicates that the applicant's most recent departure from the United States occurred in October 2009. The applicant testified at her adjustment interview that a few days after her departure she then reentered the United States using her border crossing card. Thus, the applicant accrued two periods of one year or more of unlawful presence. The applicant accrued unlawful presence from when her authorized stay as a nonimmigrant visitor expired in 2001 until her departure sometime before May 5, 2006 and from when her authorized stay as a nonimmigrant visitor expired in 2008 until her departure in October 2009. The applicant is therefore inadmissible under section 212(a)(9)(B)(i) of the Act for having been unlawfully present in the United States. The applicant does not contest her inadmissibility on appeal. The applicant's qualifying relative is her spouse.

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

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. I.N.S., 138 F.3d 1292 (9th Cir. 1998)*(quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

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

The record of hardship includes an affidavit from the applicant's spouse, financial documentation, medical documentation, and country conditions information.

The applicant's spouse is claiming extreme emotional, financial, and physical hardship as a result of relocating to Mexico and as a result of separation. The applicant's spouse claims that because of his medical conditions and the costs involved with his treatment and testing he needs the applicant

in the United States to help contribute to the family income, to help take care for him, and to help with the administrative duties at his business. He also states that he will suffer hardship as a result of relocation because he will have to find new doctors in Mexico, will have to leave his business in the United States, would not be able to find other employment in Mexico, and will have to sell his home in the United States. The record establishes that the applicant's spouse owns a concrete business in the United States. Moreover, medical documentation indicates that the applicant's spouse had an operation on his lung in 2004, suffers from abdominal pain, and has lung, heart, and kidney problems that have not yet been fully diagnosed. However, the medical documentation submitted does not indicate the applicant's current condition. With the exception of receipts and prescriptions showing laboratory tests and diagnostic exams in 2011, the record does not include any current explanation as to the applicant's medical condition and how this condition is affecting his overall health and his ability to care for himself.

In addition to the hardships stated above, the applicant's spouse states that he fears for his and his family's safety if they were to relocate to Mexico because of the danger and violence along the U.S.-Mexico border. He states that he also worries about his stepson's future in Mexico as he is 13 years old and does not speak Spanish very well. In regards to conditions in Mexico, the applicant's spouse states that the applicant would return to her home town of Moctezuma, a small town located in Sonora Mexico. The record indicates that the applicant's spouse was also born in Sonora and his mother currently resides in Sonora. He states that in order to visit his spouse in Mexico he will have to drive 240 kilometers passing through the border city of Agua Prieta. He states further that he suffers severe stress and anxiety regarding the violent situation in Mexico and that he fears for his safety and his family's safety if they have to live in Sonora or if he has to travel to see the applicant in Sonora. The applicant's spouse submits a U.S. State Department Travel Warning to support his claims regarding conditions in Mexico. We note that the current U.S. State Department Travel Warning for Mexico states that non-essential travel to the eastern edge of the State of Sonora which borders the State of Chihuahua (all points along that border east of the northern city of Agua Prieta and the southern town of Alamos), should be deferred. The warning states further that Sonora is a key region in the international drug and human trafficking trades, and can be extremely dangerous for travelers. The warning states that travelers throughout Sonora are encouraged to limit travel to main roads during daylight hours. The warning further explains that gun battles between rival Transnational Criminal Organizations or with Mexican authorities have taken place in towns and cities in many parts of Mexico (especially in the border region), that the location and timing of future armed engagements is unpredictable, and that extreme caution should be exercised when traveling throughout the northern border region.

Taking in the aggregate the applicant's spouse's economic ties to the United States and the conditions in the area of Mexico where the applicant's spouse would reside, we find that the applicant's spouse has shown that he will suffer extreme hardship as a result of relocation. However, we do not find that the current record establishes that the applicant's spouse will suffer extreme emotional and physical hardship as a result of separation as the hardships surrounding his medical conditions are not clear from the record and the hardships he would suffer as a result of having to visit the applicant in Mexico do not rise above and beyond what would normally be expected upon the separation of family members.

The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained in an affidavit should not be disregarded simply because it appears to be hearsay. In administrative proceedings, that fact merely affects the weight to be afforded [it] . . . ."). Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Although the applicant has demonstrated that her qualifying relative would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 a qualifying relative as required under section 212(a)(9)(v) of the Act.

We also find that counsel's assertions regarding the field office director's failure to exercise discretion being contrary to well established law is incorrect. Section 212(a)(9)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(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.