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

U.S. Citizenship and Immigration Services

[redacted]

Date: OCT 17 2012 Office: TEGUCIGALPA, HONDURAS FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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, or a request for a fee waiver. 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, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras 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 is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by her spouse on her behalf. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to establish that a denial of her waiver application would result in extreme hardship to her U.S. citizen spouse and denied the application accordingly. *See Decision of District Director* dated November 30, 2010.

On appeal, the applicant, through counsel, maintains that denial of the waiver application would result in extreme hardship to her U.S. citizen spouse who is now separated from, yet financially responsible for his family in Honduras. The appeal is accompanied, in part, by a statement from the applicant's husband listing the medical, psychological, educational, financial and emotional hardships faced by the applicant's family due to her inadmissibility to the United States. *See* Applicant's Spouse's Appeal Statement. The applicant's husband further states that he is not able to relocate the family to Honduras. *Id.* The appeal is also accompanied by copies of the applicant's spouse's 2009 Form W-2, Wage and Tax Statement, evidence of home ownership, and medical records relating to the couple's eldest daughter.

The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (B) ALIENS UNLAWFULLY PRESENT.-
>
> > (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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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.
> >
> > ***

> (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 first entered the United States without inspection in January 2000 and accrued unlawful presence here until her departure in January 2010. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for over a year. The applicant's qualifying relative is her U.S. citizen spouse.

The record contains references to hardship the applicant's children 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)(B)(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.

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*, 138 F.3d at 1293 (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 in this case contains statements from the applicant's spouse indicating that denial of the waiver application would result in hardship to himself and his family. Specifically, the applicant's spouse maintains that when the applicant departed the United States, he remained solely responsible for his children's financial support and care-giving. *See* Statement of the Applicant's Spouse on Appeal. The applicant's spouse explains that he is likely to suffer high levels of anxiety, stress, headaches, solitude and insomnia due to his wife's inadmissibility. *Id.* He further explains that the couple's eldest daughter suffers from alopecia, a medical condition resulting in hair loss, and that this intensifies his stress and anxiety. *Id.* Additionally, the applicant's spouse notes that the educational opportunities for the couple's daughters in the United States are superior to those in Honduras. *Id.* He explains, however, that he had to withdraw his daughter from pre-school when the applicant departed to Honduras because he was unable to transport her or take care of her after school. *Id.* The applicant's spouse states that he does not have extended family in the area who could help with his children's care-giving and that he eventually had to take his children to Honduras to stay with the applicant so he could comply with the responsibilities of his job. *Id.* Financially, the applicant's spouse states that the

applicant's departure has resulted in additional expenses including immigration, legal, and travel fees. *Id.* He also states that it would be impossible for him to find adequate employment in Honduras and that relocation there is not a viable option for his family. *Id.* Lastly, the applicant's spouse states that Honduras is a Catholic country, and that being an Evangelical Christian, he would face further hardships finding a place of worship and respect for his faith and beliefs. *Id.*

The AAO notes that a claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). The applicant in this case has not established that her U.S. citizen spouse would face extreme hardship because of either separation or relocation.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."). The applicant's spouse's claimed financial difficulties do not rise to the level of extreme hardship, by themselves or when considered in the aggregate, because they do not rise beyond those hardships ordinarily associated with inadmissibility or deportation.

The applicant's spouse states that his wife's inadmissibility would cause increased stress and anxiety. His claim is not corroborated by any medical or mental health professional opinion indicating that the stress and anxiety facing the applicant's spouse is anything beyond what is normally faced by any individual in similar circumstances. Although there is evidence that the applicant's daughter suffers from a medical condition, there is no evidence that treatment of the condition is unavailable in Honduras or that the condition is chronic or related to the applicant's inadmissibility. In terms of the applicant's spouse's financial hardship, the record indicates that the applicant's spouse was solely responsible for the family's financial well-being prior to the applicant's departure. The applicant was primarily responsible for the children's care, but the applicant has not established how the changes in family life caused by her departure or the hardship caused by their separation rise to the level of extreme hardship to the applicant's spouse. The applicant's spouse is gainfully employed, as evidenced by his Form W-2, Wage and Tax Statement. Additionally, the record indicates that he owns his own home. *See* Mortgage documentation. The applicant's documented income is more than sufficient to meet his monthly mortgage payment and there are no documents in the record to corroborate the applicant's spouse's claim of additional expenses incurred due to the applicant's inadmissibility.

The record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, 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 her qualifying relative as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying relative 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.