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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: APR 0 3 2013 Office: CIUDAD JUAREZ (ANAHEIM) FILE: [redacted]

IN RE: [redacted]

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

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico. The matter 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 again seeking admission within ten years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident spouse and U.S. citizen children.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director,* dated June 8, 2012.

On appeal, the applicant contends in the Notice of Appeal or Motion (Form I-290B) that his qualifying spouse is suffering from financial hardships. The applicant also indicates that his family would have problems relocating to Mexico due to adverse country conditions. The applicant submits new evidence for consideration with him appeal.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); Form I-290B; letters from the qualifying spouse, her mother, friends, the qualifying spouse's and applicant's employers; relationship and identification documents for the applicant, qualifying spouse, and their children; financial documentation; country-conditions materials about Mexico; photographs; court documentation regarding the applicant; an Application for Immigrant Visa and Alien Registration (DS-230) and an approved Petition for Alien Relative (Form I-130). 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-
> >
> > ....
> >
> > (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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

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. The applicant's wife is the only 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 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 hardship 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 hardship takes the case beyond those hardship 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 indicates that the applicant entered the United States on July 5, 1999[1] and remained in the United States until July 2011. The applicant accrued unlawful presence from December 13, 2000, the date of his eighteenth birthday, until his departure in July 2011. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. Therefore, as a result of the applicant's unlawful presence, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant has not disputed his inadmissibility.

With respect to the hardship she is experiencing as a result of their separation, the applicant's spouse indicates in her letter that she emotionally is suffering to see their children's pain, caused by living without the applicant. His absence also causes her stress, sleeplessness and lack of appetite. The qualifying spouse also states that it is "unbearable" for her to live without him and "heartbreaking" for their children.

Further, the applicant's spouse indicates that she is struggling financially to care for their children without the help of the applicant. The record indicates that the applicant's mother-in-law loaned her daughter five thousand dollars; it also includes documentation of another loan, letters from the applicant's former employer and qualifying spouse's current employer and proof of some expenses. While it appears that the applicant's spouse is experiencing some financial difficulties, the record does not include evidence regarding the applicant's contributions to their household when he lived in the United States or details showing how his presence would improve the applicant's spouse's financial situation. As such, the applicant failed to provide sufficient evidence to establish that the qualifying spouse is suffering emotional and financial hardship as a result of her separation from the

[1] This entry date is indicated on the applicant's Form I-130. The applicant's Form I-601 denial decision and other documents in the record indicate he entered the United States in July 2000. This discrepancy in entry dates, however, does not affect the inadmissibility determination.

applicant that, considered in the aggregate, are extreme. The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him.

With respect to the hardship that the applicant's qualifying spouse, a native of Mexico, would experience if she were to relocate there, she states that she does not know anyone in Mexico and that she is concerned about finding work there. The applicant also indicates in the Form I-290B that his family would have problems relocating to Mexico due to their proximity to a volcano, the lack of clean water and safety concerns. While the applicant submits contains country-conditions documentation indicating that there are safety, economic and other issues in Mexico, neither he nor his qualifying spouse indicates where they would live in Mexico. Further, it appears that the applicant's spouse has lived most of her life in Mexico. Moreover, the record does not address the family or community ties that the applicant's spouse has to the United States. Even were the AAO to take notice of general conditions in Mexico, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by any adverse conditions there. The assertions made by the applicant and his spouse are evidence and have been considered. However, they cannot be given great weight absent supporting evidence corroborating their claims.

Further, the qualifying spouse asserts that she does not want their children to relocate to Mexico due to the "poor income, education and healthcare," "poor job environment" and safety issues. However, it is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver, and hardship to their children will not be separately considered, except as it may affect the applicant's spouse. The current record does not establish that the applicant's spouse would experience extreme hardship upon relocating to Mexico. The AAO therefore finds that the applicant has not met his burden of showing that his qualifying spouse, a native of Mexico, would suffer extreme hardship if she relocates to Mexico to be with him.

In this case the record does not contain sufficient evidence to show that the hardship faced by 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 his qualifying spouse as required under section 212(a)(9)(B) 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) of the Act, the burden of proving eligibility remains entirely with the applicant. See 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.