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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 0 3 2013 OFFICE: PANAMA CITY FILE:

IN RE:

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 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 with the field office or service center that originally decided your case by filing a 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, Panama City, Panama. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted but the underlying application remains denied.

The applicant is a native and citizen of Ecuador 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 readmission within 10 years of departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen spouse. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse.

In a decision dated March 10, 2011, the Field Office Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute and the application for a waiver of inadmissibility was denied accordingly. On October 2, 2012, the AAO dismissed the applicant's appeal of that decision. On motion, the applicant submits new evidence in regards to the hardship to her U.S. citizen spouse.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO notes that the applicant filed a motion to reconsider, but at the same time, submitted new evidence. The AAO will accept the motion as a joint motion to reopen and reconsider.

In support of the waiver application, the record includes, but is not limited to statements by the applicant's spouse, psychological reports of the applicant's spouse and children, medical records for the applicant's spouse, medical information for the couple's daughter, limited school records for the applicant's daughter, letters from community members, biographical information for the applicant, his spouse, and their children, identification information for family members in the United States, limited financial information for the applicant and her spouse, country conditions information for Ecuador and documentation of the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more. Section 212(a)(9) of the Act provides:

> (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.
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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.

The applicant stated that she entered the United States without inspection in 1994 and remained in the United States until December 12, 2009. The applicant began accruing unlawful presence when she turned 18 years old on July 17, 2003 until the date of her departure from the United States. As the period of unlawful presence accrued is one year or more, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from her departure from the United States. The applicant did not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, as the spouse of a U.S. citizen. In order to qualify for this waiver, however, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. Hardship to the applicant or her children is not considered 212(a)(9)(B)(v) waiver proceedings unless it is shown to cause hardship to a qualifying relative, in this case the applicant's spouse. 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 deportation, 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, 885 (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 1292, 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.

On motion, the applicant's spouse states that he and his children are suffering from emotional problems as a result of separation from the applicant. He also states that the cumulative hardship that he is experiencing as a result of the family's separation rises to the level of extreme. No new evidence, however, of other types of hardship, such as financial or medical hardship, was submitted on motion. In regards to emotional hardship, the record contains three new psychological assessments

dated October 19, 2012, prepared by [redacted] Ph.D, clinical psychologist, pertaining to the applicant's spouse and two daughters. Dr. [redacted] diagnosed the applicant's spouse with Major Depressive Disorder, stating that "the patient is noted to have passive suicidal ideation which means that he is at risk for deterioration in mood and behavior and will often make efforts to engage in self-destructive behavior." Dr. [redacted] also stated that there is significant evidence that the applicant's spouse suffers from a substance abuse problem and uses excessive drinking as a result of his inability to cope with his situation. She recommended that the applicant's spouse obtain intensive services, "including a twelve-step program and counseling as well as possible psychotropic medication." In regards to the applicant's nine year old daughter, Dr. [redacted] states that she is also suffering from Major Depressive Disorder, citing in particular her lack of coping skills and parental support. She also notes that this young child may be suffering from bullying. The AAO notes that documentation submitted earlier on appeal supports Dr. [redacted] report concerning the mental health of the couple's eldest daughter. Dr. [redacted] evaluation of the couple's youngest child stated that the child was suffering from Adjustment Disorder with Mixed Anxiety and Depressed Mood. As stated above, hardship to the applicant's children is only relevant insofar as it is shown to cause hardship to the applicant's qualifying relative, her spouse. In the present case, the applicant's spouse is the only qualifying relative for the waiver, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse. Here, Dr. [redacted] states that the applicant's spouse's mental health and alcohol dependence are negatively affected by his concern about his daughters, in particular his eldest daughter. The AAO does not question the difficulty that the applicant's spouse may experience in raising two young children without their mother, and the psychological assessments submitted are useful in assessing the hardship in this case. This documentation, submitted with documentation of additional hardship, such as financial hardship, may certainly rise to the level of extreme.

As noted in our previous decision, the applicant's spouse submitted documentation of his payment of rent in the United States and Ecuador and the financial support that he has sent to the applicant in Ecuador. The record, however, does not contain any evidence that the applicant's spouse is unable to meet his expenses. The record contains the applicant's spouse's 2010 Federal Income Tax Returns that indicate that the applicant's spouse reported an income of $18,000 in 2010. The AAO notes that this amount was just below the poverty line for a family of three in 2010, but the record fails to indicate that the applicant's spouse is suffering from financial hardship as a result of separation from the applicant. He states that he must pay for child care in the applicant's absence, and that this has caused him financial hardship, but there is no documentation in the record to support that assertion. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information 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 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)). The record does not indicate the degree of financial hardship suffered by the applicant's spouse.

Based on the lack of evidence in the record, it is not possible to determine the degree of hardship that the applicant's spouse would experience as a result of separation from the applicant. Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse would endure some hardship as a result of long-term separation from the applicant, the record does not establish that the hardships he would face, considered in the aggregate, rise to the level of "extreme."

The applicant states that her spouse, a native of Guatemala, would also suffer extreme hardship if he were to relocate to Ecuador, to reside with the applicant. On motion, the applicant's spouse states that he cannot move to Ecuador because he would not be able to find employment there to support his family. He states that in Ecuador the family would be "poverty stricken." The applicant's spouse submitted a 2011 report from the U.S. Department of State on Human Rights in Ecuador. The report, however, does not explain why the applicant's spouse would be unable to find employment in Ecuador as a result of his being a native of Guatemala. He has not provided evidence to indicate that he would not be able to get authorization to work in Ecuador as an individual married to a citizen of that country. Moreover, there is no indication in the record that the applicant is experiencing poverty in Ecuador or that she is unable to find employment there to support the family. The AAO notes Dr. statement in her assessment that "it is not feasible for the patient to move to a foreign country or relocate with his wife for many reasons." In particular, Dr. cites the applicant's spouse's inability to obtain employment and health insurance in Ecuador. The AAO respects Dr. opinion with in regards to her mental health of assessment of the applicant's spouse, but she does not provide any basis for her assertion that the applicant's spouse would be unable to find employment or health insurance in Ecuador.

Additionally, as stated previously, although the AAO recognizes the applicant's longtime residence in the United States and his family ties to the United States, the record does not indicate the nature of the applicant's spouse's relationship with his parents in the United States or the hardship that he would experience if he were to be separated from his parents. Again, 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 at 165. The applicant's spouse presumably speaks Spanish and has not provided any documentation to illustrate that he would be unable to support himself financially in Ecuador, or would suffer any other type of hardship there. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Ecuador, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional

bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v), of the Act, be above and beyond the normal, expected hardship involved in such cases.

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 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 family member, no purpose would be served in determining whether she merits a waiver as a matter of discretion.

In proceedings for an 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. After a careful review of the record, the AAO finds that in the present motion, the applicant has not met this burden. Accordingly, the motion is granted and the underlying appeal remains dismissed.

ORDER: The waiver application remains denied.