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

Date: MAR 2 1 2013 Office: CIUDAD JUAREZ (ANAHEIM) FILE:

IN RE:

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,

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 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 admission within ten years of his last departure from the United States. The applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

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 29, 2012.

On appeal, the applicant's spouse asserts that she suffering financial and emotional hardships as a result of her separation from the applicant and submits new evidence for consideration. *See Notice of Appeal or Motion (Form I-290B)*, dated July 12, 2012.

The record contains the Application for Waiver of Grounds of Inadmissibility (Form I-601); Form I-290B; financial documentation; letters from the qualifying spouse and applicant; a translated article regarding crime in Mexico; an approved Petition for Alien Relative (Form I-130) and an Application for Immigrant Visa and Alien Registration (Form DS-230). 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, "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 . . . 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 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 applicant entered the United States without inspection on April 11, 2007 and returned to Mexico voluntarily in September 2011. He therefore accrued over one year of unlawful presence between 2007 and 2011 and is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 admission within ten years of his departure from the United States. The applicant has not disputed his inadmissibility.

The applicant must first establish that his U.S. citizen spouse would suffer extreme hardship were she to live in the United States while the applicant resides in Mexico due to his inadmissibility. The applicant's spouse states that she is suffering emotional hardship as a result of her separation from the applicant. In two letters the qualifying spouse indicates that she misses the applicant and she states that he is her "motivation" and her "only moral support." She additionally asserts that she fears for his safety in Mexico. The applicant submits a translated newspaper article regarding the discovery of an "illegal burial site" involving gang murders in Mexico. Although the qualifying spouse may be suffering emotionally due to her separation from the applicant, the record fails to demonstrate in sufficient detail how the qualifying spouse's experiences amount to hardship beyond that commonly experienced by other separated families. Further, while the applicant's spouse indicates she fears for the applicant's safety, the record lacks evidence demonstrating that how the criminal activity described in the submitted article affects the applicant, whether such criminal activity occurred near the applicant's home in Mexico or whether he has experienced any safety issues there.

Further, the applicant's spouse contends that she is struggling financially. She asserts that she is behind on her rent and other bills. In the Form I-290B, the applicant's spouse states that she has not been able to send the applicant money and that he has not had stable work in Mexico. In addition to the Form I-290B and letters from the qualifying spouse and applicant, the record contains a joint federal income tax return from 2011 (Form 1040EZ), documents showing delinquency in payment of the qualifying spouse's rent, an eviction notice, and a July 2012 loan

document, unsigned, showing that the applicant's wife will borrow $700. While it appears that the applicant's spouse is experiencing financial difficulties, it is unclear from the record how the applicant financially contributed to their household when he lived in the United States and how he would assist his spouse now. The assertions of the qualifying spouse are relevant evidence and have been considered. Going on record without supporting documentary evidence, however, 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)). As such, the evidence of the qualifying spouse's hardship upon separation, considered in the aggregate, including her emotional and financial hardships, fails to establish that she is experiencing extreme hardship.

The applicant also failed to establish that his qualifying spouse would experience hardship upon relocation to Mexico. The qualifying spouse notes that the applicant has not been able to find steady work and that he is struggling in Mexico to care for his mother and niece. However, the record does not address the qualifying spouse's employment prospects in Mexico or any income she earns in the United States that she would lose upon relocation. While the record contains a tax return, it is unclear who earned the reported income. The applicant has not provided sufficient evidence regarding his spouse's potential financial hardship upon relocation. Additionally, the qualifying spouse mentions that she fears for the applicant's safety in Mexico, and as noted above, the record contains one article regarding criminal activity in Mexico. However, even were the AAO to take general notice of the conditions in Mexico, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by any adverse conditions there. The evidence in the record, considered in the aggregate, does not establish that the applicant's spouse would experience extreme hardship upon relocating to Mexico and the applicant has not met his burden of demonstrating that his qualifying spouse will suffer extreme hardship in the event that she relocates to Mexico.

In proceedings for applications 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.