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

(b)(6)

DATE: MAR 2 8 2013 Office: PANAMA CITY FILE:

IN RE: Applicant:

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:

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 request 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia 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, and section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), for departing the United States while an order of removal was outstanding and then seeking admission within 10 years of the date of her departure or removal. 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 had failed to demonstrate extreme hardship to her U.S. citizen spouse and denied the application accordingly. *See Decision of Field Office Director*, dated August 16, 2012. The Field Office Director also concluded that the applicant had failed to demonstrate that she merited a favorable exercise of discretion. *Id.*

On appeal, counsel for the applicant asserts that the qualifying spouse is suffering emotional and financial hardship from being a single father. Counsel states that the applicant's children are upset about their mother's absence and that their distress is causing extreme emotional hardship for the qualifying spouse, their step-father. Additionally, counsel contends that the applicant has been unable to find work in Colombia and that the qualifying spouse is struggling to support her while also supporting himself and the children in the United States. Counsel also asserts that the qualifying spouse and the children would experience hardship in Colombia because healthcare and the standard of living in that country are poor. Finally, counsel contends that the cost of relocation would create a financial hardship for the qualifying spouse, that he would be unable to find a job there, and that moving would create further stress for him. *Counsel's Brief.*

The evidence includes, but is not limited to: statements from the applicant and the qualifying spouse; letters from the family doctor regarding the qualifying spouse and his step-children; medical records; financial records; internet articles about various health conditions; and country conditions information. 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.-
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> (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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> . . . .
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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 without inspection on or about August 1, 1991. She married a U.S. citizen, [redacted] on October 4, 1994. [redacted] filed a Form I-130 on her behalf, but that petition was denied on August 17, 1998 based on the applicant's failure to provide any evidence that her marriage was bona fide. The applicant was placed into removal proceedings and eventually received an order of voluntary departure with instructions to depart by January 18, 2003. The applicant's subsequent appeal to the Board of Immigration Appeals was denied on January 9, 2003. On January 31, 2003, the voluntary departure order became an order of removal. On May 8, 2007, the applicant married the qualifying spouse. On September 3, 2009, she was apprehended by immigration officials and placed under an order of supervision. She departed the United States on October 14, 2011. Therefore, the applicant accrued more than one year of unlawful presence and is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from her last departure. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver 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 the applicant's U.S. citizen children is not directly relevant under the statute and will be considered only insofar as it results in hardship to the qualifying 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 U.S. 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. INS*, 138 F.3d 1292, 1293 (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.

On appeal, the qualifying spouse asserts that his separation from the applicant has been very stressful for him. He states that the applicant left her three young children in his care when she departed for Colombia and that raising the children alone has been difficult for him. The qualifying spouse notes that he works as a truck driver, a job which requires him to be focused and well-rested and which results in his absence from home for long periods of time. He states that since the applicant's departure, he has experienced stress and anxiety and has struggled to meet his responsibilities as a single parent. He explains that he worries about the applicant's safety in Colombia and that he has been diagnosed with depression and severe anxiety as a result of his concern over her absence. He also states that he is experiencing financial hardship because he cannot afford to hire a babysitter to care for the children while he is away for work.

The qualifying spouse also states that he cannot relocate to Colombia because it is a dangerous country. Additionally, he notes that he has two teenage sons in the United States from whom he does not want to be separated. He also fears that he would be unable to find work in Colombia and his family's standard of living would decrease. Furthermore, the qualifying spouse fears taking his step-children to Colombia because they have health conditions that are affected by stress. He notes that his step-children have medical conditions including asthma, eczema, and allergies, all of which can worsen due to stress. His step-daughter, [redacted] also underwent vitrectomy surgery on her right eye, for which she needs regular monitoring to avoid dimness of vision. He states that he is suffering emotionally over the possibility that his family members could experience health problems as a result of relocation.

The AAO finds that the qualifying spouse would suffer extreme hardship if he were to relocate to Colombia. The record reflects that the qualifying spouse has two teenage sons who live with their mother in the United States and for whom the qualifying spouse pays child support. If the qualifying spouse were to relocate, he may become permanently separated from his sons. Additionally, the qualifying spouse has resided in the United States for many years and has stable employment here. In the aggregate, separation from his close ties in the United States and readjustment to life in Colombia as well as concern for his safety and well-being and that of his step-children would create extreme hardship for the qualifying spouse.

However, the AAO finds that the applicant has failed to demonstrate that her qualifying spouse will suffer extreme hardship if he continues to be separated from her. Although the record contains a letter from the qualifying spouse's doctor which states that he has been suffering from anxiety and depression, the letter lacks detail about the severity of those conditions or their influence on the qualifying spouse's daily life. There is no evidence that the qualifying spouse's anxiety or depression is interfering with his ability to work, care for himself or his step-children, or fulfill other responsibilities. Although the doctor notes that he recommended follow-up in two weeks to assess whether the qualifying spouse may need to see a psychologist or psychiatrist, there is no evidence that the qualifying spouse has sought any further mental health treatment.

See Letter from [redacted], *MD*, dated September 22, 2011. Additionally, while the record reflects that the qualifying spouse's step-children have been diagnosed with health conditions that can be affected by stress, including asthma, allergies, and eczema, there is no indication that those conditions are so severe as to cause extreme hardship for the qualifying spouse or that he has been unable to arrange for them to receive appropriate medical care.

Furthermore, although counsel claims that the qualifying spouse is suffering extreme financial hardship, the evidence is insufficient to support that claim. There is no documentation of the qualifying spouse's income and the qualifying spouse has made no claim on appeal that he has been unable to meet his financial obligations. Although the record contains delinquent property tax and mortgage bills, those bills were addressed only to the applicant and were dated prior to the applicant's departure from the United States. In his statement submitted with the applicant's original Form I-601, the qualifying spouse did not mention difficulties with the taxes or mortgage, instead stating that he was concerned about the potential cost of childcare but that "we survive day by day comfortably." The applicant has not provided any evidence on appeal to demonstrate that her financial problems relating to the property taxes and mortgage are continuing or that they have affected the qualifying spouse. Even when considered in the aggregate, the evidence does not establish that the qualifying spouse would experience difficulties on separation that would rise to the level of extreme hardship.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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 in 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. at 632-33. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.