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

(b)(6)

[redacted]

DATE: APR 0 2 2014 Office: CIUDAD JUAREZ [redacted]

IN RE: Applicant: [redacted]

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Ciudad Juarez, Mexico, denied the waiver application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reopen. The motion will be granted and the prior AAO decision affirmed.

The applicant is a native and citizen of Mexico who entered the United States without admission in June 1994 and lived here until January 2008, when she voluntarily departed. As a result, she 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. 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 the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director,* July 2, 2009. On appeal, the AAO also found the record evidence did not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility. *Decision of the AAO*, January 9, 2012.

On motion, filed in February 2012 and received by the AAO in December 2013, counsel for the applicant asserts that the emotional and medical hardships previously alleged have worsened and claims that new hardships have arisen, including financial ones. In support, counsel provides a debt collection notice, supervisor's letter, and medical records. The record also includes documentation submitted in support of the Form I-601 and the appeal. The entire record was reviewed and considered in rendering this decision.

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

> 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.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now the 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 to

> the satisfaction of the Attorney General (Secretary) 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 under section 212(a)(9)(B)(v) 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. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Previously, the AAO evaluated a medical report provided in support of the original waiver request. Noting the report consisted of progress notes from 2007 and 2008 doctor visits by the applicant's daughter for infected insect bites and to evaluate her flat feet, we concluded that, without further evidence establishing the severity of these medical conditions, we could not determine they would result in hardship to the applicant's daughter if the applicant is denied admission to the United States. On motion, as the applicant offers no medical evidence regarding her daughter, we again conclude that the daughter has no conditions causing hardship to the applicant's husband, the only qualifying relative in this case. Although new evidence shows the applicant's husband underwent colon surgery in 2010, a 2012 medical letter confirms that he returned to work after two months. There is no indication he is undergoing further treatment. There is also no evidence supporting counsel's assertion that the qualifying relative is concerned for his wife's safety due to violence in the region where she is residing, and we note the absence of any cognizable hardship statement by the qualifying relative. An untranslated and undated Spanish-language note purportedly signed by the applicant's husband is not available for consideration. *See* 8 C.F.R. § 103.2(b)(3) requiring a full English translation of any foreign language document.

Counsel also asserts that the applicant's absence has imposed financial hardship on her husband and claims that loss of her income contribution caused him to be evicted from his apartment. Evidence of this claim consists of a collection notice dated January 2012. The record contains no eviction notice, no indication of how the matter was resolved, and no indication of the qualifying relative's current expenses. We further note that, while counsel claims in his February 2012 motion that the applicant's husband left the apartment in which he had been living with his wife, the June 2013 Form G-28 he filed with the AAO continues to list the qualifying relative's address as the same location noted on the Form I-601 filed in March 2008. His most recent income evidence on record is a 2008 pay stub. Therefore, regarding claimed hardship due to separation, the applicant has provided no documentation to support the claim that her absence is causing her husband any medical hardship, while the single collection notice offered fails to substantiate economic problems rising to the level of extreme. The record evidence thus falls short of establishing any consequences beyond

those commonly associated with separation of husband and wife that would rise to the level of extreme hardship.

Regarding the qualifying relative's hardship should he relocate abroad to reside with the applicant, counsel claims the applicant's husband fears for his wife's safety. In support, counsel cites the level of crime and violence in Sinaloa state, and reports that one of the applicant's relatives was a kidnapping victim. While a Travel Warning for Mexico issued by the U.S. Department of State cautions citizens about travel to the region, no evidence is offered about the kidnapping nor any showing that it had any connection to the applicant, that she or her husband have been threatened, or that he has concerns for his own safety. Other than employment, there is no indication the qualifying relative has significant U.S. ties that would be severed if he moved abroad. As noted above, the BIA has long held that loss of employment and associated economic disadvantage do not represent extreme hardships. Further, the qualifying relative is silent regarding relatives here or in Mexico (except for his nine-year-old daughter), owns no property, and makes no showing regarding his employment prospects. Although the record contains tax returns for 2003 through 2006 and employment letters from 2008, these documents do not show how relocation would impact him beyond the inconvenience of moving to a new location. As noted earlier, the record contains no statement from the applicant's husband about these matters.

Considering the entire record, there is no indication the qualifying relative suffers from a serious medical condition for which treatment is unavailable in Mexico, or that he would lose contact with close relatives or experience financial loss were he to move abroad. Therefore, based on a totality of the circumstances, the AAO concludes the applicant has not established that her spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant.

While counsel for the applicant provides several new documents, the evidence, when considered in the aggregate, fails to establish that the applicant's husband would suffer extreme hardship if his wife is unable to immigrate. The record demonstrates that the applicant's husband faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although the AAO is not insensitive to the applicant's husband's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law. Having again found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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 and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The prior decision of the AAO dismissing the appeal is affirmed.