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: SEP 22 2014 Office: NEBRASKA SERVICE CENTER FILE: [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:

SELF-REPRESENTED

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center, and a subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the decision of the AAO dismissing the appeal will be affirmed.

The record establishes that the applicant is a native and citizen of Guatemala 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen father and lawful permanent resident mother.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.[1] *Decision of the Director,* dated July 22, 2013.

A subsequent appeal was summarily dismissed by this office as a result of the applicant's failure to identify any erroneous conclusion of law or statement of fact in the Director's Decision. *See Decision of the AAO,* dated January 13, 2014.

On motion, the applicant submits the following: a brief; two declarations from the applicant's mother; a copy of the applicant's mother's Permanent Resident Card; a psychological evaluation of the applicant's mother; evidence of medications prescribed to the applicant's mother; and medical documentation pertaining to the applicant's mother. The entire record was reviewed and considered in rendering this decision.

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-
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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.
>
> . . . .

[1] We note that on the Form I-601, the applicant listed his U.S. citizen father and brother under Part B, Information About Relative Through Whom Applicant Claims Eligibility. With the instant motion, the applicant references that his lawful permanent resident mother will also suffer extreme hardship were the applicant unable to reside in the United States as a result of his inadmissibility and provides evidence of his mother's lawful permanent resident status in the United States.

> (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…

With respect to the director's finding of inadmissibility, the record establishes that the applicant entered the United States without authorization in October 2005 and did not depart the United States until August 2012. The applicant does not contest this finding of inadmissibility.

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 U.S. citizen father and lawful permanent resident mother are the only qualifying relatives in this case. Hardship to the applicant or the applicant's siblings can be considered only insofar as it results in hardship to a qualifying relative. 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 v. I.N.S.*, 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.

The applicant's U.S. citizen father contends that he will experience emotional hardship if he continues to be separated from his son. He maintains that he has a joyous relationship with the applicant. Further, the applicant's father maintains that the applicant is close to his U.S. citizen brother. The applicant's father contends that long-term separation is causing them all hardship. *Brief to Form I-601.* While we acknowledge the applicant's father's contention that he will experience emotional hardship were he to remain in the United States while the applicant continues to reside abroad, the record does not establish the severity of this hardship or the effects on his daily life. The applicant has thus failed to establish that his U.S. citizen father will experience extreme hardship were he to remain in the United States while the applicant continues to reside abroad due to his inadmissibility.

As for the applicant's lawful permanent resident mother, the applicant contends that she will experience emotional, medical and financial hardship were she to remain in the United States while he continues to reside abroad. To begin, the applicant explains that he was gainfully employed while in the United States and he needs to return to the United States to resume employment and assist his mother with respect to her financial needs. *See Declaration of*

dated June 6, 2013. In addition, the applicant's mother contends that she needs the applicant to help care for her and her two teenage daughters. *See Letter from* dated January 17, 2014. In a separate declaration, the applicant's mother maintains that since her son departed the United States, she cannot sleep and her head and heart hurt. She asserts that she does not have a relationship with the applicant's father. *See Declaration of* dated August 22, 2013.

In support of the hardships referenced above, the applicant has submitted a psychological evaluation from The evaluators conclude that the applicant's mother has been diagnosed with Major Depressive Disorder and Generalized Anxiety Disorder. *See Psychological Evaluation,* dated February 3, 2014. The applicant has also submitted copies of antidepressant medications prescribed to the applicant's mother in January 2014. Further, the applicant submitted a letter from his mother's treating physician establishing that she is being treated for numerous medical conditions, including Uterine Fibroids, Hypertension, Diabetes, Bell's palsy, Ovarian Cyst and Obesity. *See Letter from* dated December 5, 2013.

To begin, while we acknowledge the applicant's mother's contention that she will experience emotional hardship were she to remain in the United States while her son resides abroad, the record does not establish the severity of this hardship or the effects on her daily life. As noted in the psychological evaluation, the applicant's mother is gainfully employed as a playground monitor and is being treated for her medical and mental health conditions. Further, the psychological evaluators reference that the applicant was separated from his mother for fifteen years. No documentation has been provided establishing any hardship the applicant's mother experienced during the referenced years of separation.

Further, the medical documentation submitted does not establish the applicant's mother's current treatment plan, the severity of her medical conditions, and what specific hardships she is experiencing as a result of her son's absence. As for the financial hardship referenced, the applicant has not provided any documentation to establish his mother's income and expenses and assets and liabilities to establish that the applicant's relocation has caused his mother financial hardship. Alternatively, the applicant has not established that he has been unable to obtain gainful employment abroad that would permit him to support himself and assist his mother financially should the need arise. In addition, the applicant has not provided any documentation establishing that he is in danger in his home country, as the psychological evaluators state in their report.

We recognize that the applicant's mother will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal, and the difficulties she would face as a result of separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme hardship based on the record.

In regard to relocating abroad to reside with the applicant as a result of his inadmissibility, we note that the applicant has not outlined what hardships, if any, his father or mother would experience

were they to relocate abroad to reside with the applicant. The only assertion made with respect to this criterion is from the psychological evaluators, who assert that the applicant's mother has no ties to Guatemala and would experience emotional, financial and medical hardship were she to relocate to Guatemala to reside with her son. No supporting documentation has been provided establishing the hardships the evaluators contend the applicant's mother would experience were she to relocate abroad to reside with the applicant. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). It has thus not been established that the applicant's father or mother will experience extreme hardship were they to relocate abroad to reside with the applicant as a result of his inadmissibility.

On motion, the record, reviewed in its entirety, does not support a finding that the applicant's father or mother will face extreme hardship if the applicant is unable to remain in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son or daughter is removed from the United States or is refused admission. There is no documentation establishing that the applicant's parents' hardships are any different from other families separated as a result of immigration violations. Although we are not insensitive to the applicant's parents' situation, the record does not establish that the hardships they would face rise to the level of "extreme" as contemplated by statute and case law. Having 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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