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 29 2014 Office: SEATTLE File: [redacted]

IN RE: Applicant: [redacted]

APPLICATIONS: 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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of Mexico, 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 for one year or more. The applicant seeks a waiver of inadmissibility in order to adjust his status as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

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 Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director,* September 24, 2013. On appeal, the AAO also concluded 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*, February 11, 2014.

On motion, counsel for the applicant asserts that the AAO abused its authority in finding no extreme hardship had been shown and failed to accord proper weight to the expert evidence. In support, counsel provides a brief with exhibits, with the only new evidence consisting of an updated medical letter regarding lab test results. The record contains documentation including, but not limited to: medical records, including a psychological evaluation, progress notes, and laboratory results; financial evidence; birth, marriage, and naturalization certificates; copies of passport pages, a border crossing card, and Form I-94; support letters; and photographs. The entire record was reviewed and considered in rendering this decision.

According to USCIS regulations, 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 Service 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).

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

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
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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.

. . . .

(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....

The record reflects that the applicant admits residing unlawfully in the United States from 2001 to 2005, he worked here from 2002 to 2005, and he departed the country sometime in 2005, thereby triggering his inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act. Immigration records show he was issued a Border Crossing Card (BCC) on July 22, 2005 and used it the same day to procure his first lawful U.S. admission.[1]

A waiver 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. 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,

[1] Counsel claims that the applicant has remained in the country since his September 5, 2005 admission, but immigration records indicate he in fact left and returned several times after that date.

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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

On appeal, we found the record failed to establish that separation from the applicant would cause extreme hardship to the applicant's wife. The record did not show how any emotional hardships she would experience exceeded the typical results of inadmissibility of a family member. First, although she points out that both of her parents live in the United States, the record contains no indication that her bond with her parents would be affected by her husband's departure. Next, after acknowledging the psychiatrist's conclusion that the applicant's absence would potentially affect his wife's health, we pointed out that the psychological evaluation identifies no specific condition she would experience besides stress and fails to establish its severity or impact on her daily life. Further, we pointed out there is no documentation of claimed trauma to the applicant's son due to separation from his birth mother and observed that, while the psychiatrist notes some emotional impact to the applicant's stepdaughter will result from his absence, the evidence fails to establish the severity of this hardship and thus offers no basis to find extreme hardship to the applicant's wife. Further, the

record failed to support the applicant's claims that his wife is financially dependent on him, that he is the primary wage earner, or that he and his wife plan to open a business together. Finally, counsel's assertion that the applicant's wife had an extreme need for the applicant's financial support is not corroborated by the evidence. *See Decision of the AAO*, February 11, 2014.

On motion, counsel has provided no evidence addressing the shortcomings identified regarding the claim of psychological stress noted by the psychiatrist. While noting these claims, we pointed out that counsel's unsupported assertions are not themselves evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without such evidence, there is insufficient basis to evaluate the emotional hardship the applicant's wife will experience due to her husband's absence. As noted in our prior decision, there is likewise no documentation offered on motion to remedy the lack of evidentiary support for counsel's claim that the applicant's wife has an extreme need for his financial contribution due to adverse impacts of the global economy. And, there is nothing on record indicating that she will be unable to visit the applicant to ease the impact of separation. Based on the totality of the evidence, we cannot conclude that the applicant's inability to remain here would impact his wife emotionally beyond the usual consequence of such separation or make her unable to meet her financial obligations.

For all these reasons, we affirm our prior decision finding that the cumulative effect of the emotional and financial hardships the applicant's wife will experience due to the applicant's inadmissibility does not rise to the level of extreme. While sensitive that the applicant's absence will impose some hardship on his wife, we conclude that staying in the United States without the applicant due to his inadmissibility would not impose hardships beyond those problems normally associated with family separation.

Regarding our finding on appeal that the applicant had not established a qualifying relative would experience extreme hardship by relocating to Mexico, no new evidence is offered on motion. The record reflects the applicant's wife naturalized just over eight years ago, lived in Mexico until her early 30s before immigrating, married the applicant on October 8, 2010, and has no biological children with him. While counsel asserts that adverse impacts to relatives in the United States due to her departure would meet hardship requirements for a waiver, the record does not reflect the applicant's wife would experience hardship either through her parents or her child. First, there is no evidence regarding her parents' situation -- immigration status, residence address, or lifestyle -- that indicates how her absence would cause them hardship. Second, the psychiatrist states that her 19-year-old daughter would be disadvantaged educationally by moving to Mexico, but the motion fails to address our finding on appeal that this claim lacked support. In addition, as her daughter is working part time and no longer a minor, she is not required to accompany her mother to Mexico. Further, as we noted on appeal, although the applicant's stepdaughter began receiving counselling several years ago, the record contains no details regarding the severity of the conditions giving rise to treatment or showing how the absence of her mother would affect the daughter. *See Intake Assessment,* January 16, 2013. Rather, the evidence suggests that the applicant's wife and her daughter do not have a close relationship. The evidentiary record thus remains insufficient to show such adverse impact to the qualifying relative's daughter as to cause extreme hardship to her.

Citing *Daubert v. Merrell Dow Pharmaceuticals,* 509 U.S. 579 (1993), counsel claims that the dismissal decision rejected expert testimony and was thus rendered without benefit of this evidence, but the record indicates otherwise. As discussed above, the decision on appeal reflects, rather, that we considered the psychological evaluation, along with other documentary evidence, and found it insufficient to establish extreme hardship.

We recognized on appeal that significant conditions of health, and lack of suitable medical care in the relocation country, are relevant factors in establishing extreme hardship. However, after observing that the record contained laboratory results indicating the applicant's wife had abnormal fasting glucose levels and was being tested for diabetes mellitus, we noted that it did not explain the significance of these results, indicate any required treatment, or show treatment is unavailable in Mexico. We thus found the evidence insufficient to establish the applicant's wife suffers from such a condition. On motion, the applicant submits another test result again showing his wife had impaired fasting glucose levels that failed to support a diagnosis of diabetes and, again, there is no medical explanation of the significance of this finding. The medical documentation on record was prepared for review by medical professionals and does not contain a clear explanation of the current medical condition of the applicant's wife. As we observed in our previous decision, without a plain language explanation of the nature and severity of any health condition and of any treatment or family assistance needed, we cannot reach conclusions about the severity of a condition or the treatment needed. Country condition information continues to note that excellent health facilities are available in Mexico City. *See Country Specific Information—Mexico,* DOS, May 27, 2014. We thus reaffirm our conclusion that, in the aggregate, the impact on the applicant's wife of moving back to Mexico to continue living with her husband does not rise to the level of "extreme hardship," as it does not go beyond the common or usual consequences of inadmissibility or removal.

Similarly, we found that, while the psychiatrist's observations primarily address the impact on the applicant's family of his return to Mexico, the psychiatrist also states that the applicant's wife would lose her business if she accompanied her husband to Mexico. *See Psychiatrist's Affidavit,* February 7, 2011. We noted, however, that no documentation for this claim was provided, although on motion the qualifying relative makes the same assertion. The qualifying relative's claim that her business prevents her from moving to Mexico remains unsupported by documentation and, as we stated on appeal, the record contains little evidence regarding the business besides forms indicating that her employer's address and her residence address are identical. The applicant offers no new financial information on motion. And, as we noted in our previous decision, his wife's reference to unspecified "personal threats" as another reason she cannot return to Mexico is unsupported by the record, there is no evidence she would relocate to an area of concern, and the U.S. Department of State (DOS) indicates that no advisory is in effect for Mexico City, where both the applicant and his wife grew up. *See Travel Warning—Mexico,* DOS, January 9, 2014.

When considered in its totality, the documentation on record reflects the applicant has not established that a qualifying relative will suffer extreme hardship if he is unable to live in the United States. While recognizing that the applicant's wife will endure hardship as a result of the applicant's inadmissibility, we note that her situation is typical of individuals affected by inadmissibility and thus find that the applicant has failed to establish extreme hardship as required under the Act.

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.