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

#7

[redacted]

DATE: NOV 2 3 2012 Office: CIUDAD JUAREZ, MEXICO FILE: [redacted]

IN RE: [redacted]

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), and section 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(11).

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico and 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 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.

The applicant was also found to be inadmissible under section 212(6)(E)(i) of the Act, 8 U.S.C. § 1182(6)(E)(i), for knowingly encouraging, inducing, assisting, abetting or aiding another alien to enter or to try to enter the United States in violation of law.

The applicant is the beneficiary of an approved Petition for Alien Relative and seeks waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(d)(11) of the Act in order to reside in the United States with her United States citizen spouse.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated March 26, 2010.

On appeal, applicant's spouse asserts that he would suffer extreme hardship if the applicant were not granted a waiver of inadmissibility. *See statement from* [redacted] dated April 22, 2010.

The record contains, but is not limited to, statements from the applicant and the applicant's spouse, letters from family and friends, as well as financial records and receipts, letters from medical doctors, various immigration applications, and copies of identification documents. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)of the Act provides:

> (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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

...

(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 accrued unlawful presence in the United States. Specifically, the applicant entered the United States in November 2004 without inspection, and remained until March of 2009, when she voluntarily departed the United States. The applicant accrued unlawful presence from November of 2004 until her departure in March of 2009. The applicant now seeks readmission as an immigrant. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States and seeking readmission within 10 years of her last departure. The applicant does not contest her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(6)(E) of the Act provides:

(i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible. . . .

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), provides:

The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged,

> induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record also reflects that during an adjustment of status interview on May 17, 2009 the applicant testified under oath that she entered the United States through Texas, with her minor son without the assistance of a guide in violation of the law. Based upon the foregoing, the applicant was also found to be inadmissible under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs in the applicant's inadmissibility under 212(a)(6)(E)(i) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent resident spouse or parent of the applicant. Hardship to the applicant and her child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and the 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 1292 (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 spouse indicates he cannot live in Mexico because of the high crime rates in the area where his wife is currently living While it is acknowledged that living in some areas of Mexico may pose a challenge based on recent travel warnings issued by the United States Department of State, the applicant's spouse was born in that country and also traveled there on several occasions according to his own statements, yet there were no specific details offered into the record regarding difficulties he may have experienced while there during those times. The critical decision of whether to relocate in Mexico is surely not a stress-free choice, but there is insufficient evidence offered for consideration to determine that relocation would in fact cause extreme hardship to the applicant's spouse.

The separation of the qualifying family member from the applicant must also be taken into consideration in determining extreme hardship. The applicant's spouse indicates that his wife has acted as his partner in taking care of their family by providing the necessary home environment so that he would be free to provide for their financial support. The applicant's spouse also indicates that he tried to allow his son to also live in Mexico with his wife after she was not allowed to return, but he had to bring him back to the United States because the crime

became much worse in the area where his wife is living. The applicant's spouse stated that his wife is currently being treated for depression and stress because she has not been allowed to live with her family in the United States. The applicant's spouse also states supporting two households has become financially difficult. The applicant's spouse finally states that he fears losing his current employment if he continues to travel back and forth to Mexico in order to visit the applicant.

While it may prove somewhat of a strain to separate a homemaker from the family home, in the present case there has not been an adequate showing that this is an extreme hardship beyond the conventional difficulties faced under these circumstances. The applicant's spouse has always been the sole source of financial support for the family, and there has been no evidence provided indicating that his ability to earn income has been compromised by the applicant's absence.

Additionally, although the applicant's provided several receipts for purchases and services in Mexico along with letters from medical doctors indicating that she is suffering from depression and stress, the applicant has not established that these financial expenditures or medical issues impact her spouse's well-being or ability to manage life in the United States. In this case, the applicant did not provide sufficient evidence to demonstrate that her challenges in Mexico elevate her spouse's hardship to an extreme level. Therefore, although it may be ideal for the applicant to reside in the household in the United States, it has not been demonstrated that the separation would prove to be an extreme hardship for the applicant's spouse.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility of a spouse to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her United States citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver under section 212(a)(9)(B)(v) of the Act as a matter of discretion. Also, no purpose would be served in assessing whether she has shown eligibility for a waiver under section 212(d)(11) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(d)(11) 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.