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: JUN 19 2014 Office: SEATTLE, WA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i)

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 matter 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 Act for having been unlawfully present in the United States for more than one year, and section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act in order to reside with his wife and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering the applicant's wife is susceptible to depression and would be unable to support her family by herself.[1]

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and his wife, , indicating they were married on June 28, 2009; a copy of the birth certificate of the couple's U.S. citizen son; a letter from the applicant's wife; a mental health evaluation; a letter from a physician and copies of medical records; workers' compensation documents for the applicant's father; a letter from the applicant's father; letters of support; letters from the applicant's wife's siblings; copies of bills, tax returns, and other financial documents; copies of photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

[1] On appeal counsel states that there is a substantial legal question whether the AAO has jurisdiction over any administrative appeal. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).

> 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 [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.

Section 212(a)(6)(C)(i) of the Act provides:

> *In general.*—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien. . . .

The record shows, and counsel concedes in his brief, that the applicant entered the United States in June 2005 without inspection and remained until September 2008. The record further shows, and counsel concedes, that the applicant was admitted to the United States in October 2008 using an H2B visa which he obtained by claiming he had never previously resided in the United States. Therefore, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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 at 1293 (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.

In this case, the applicant's wife states that she was born in Mexico and that her family was separated when she was growing up because her father lived and worked in the United States in order to give them a good life. She further states that after she finished middle school in Mexico, she moved to the United States when she was fourteen years old. According to the applicant's spouse it was a very sad time in her life because she did not feel like she belonged in the United States. She states that things got better, that she is the first person in her family to graduate from high school, and that she dreams of going to college and becoming a nurse. She claims she met her husband at her job, that they have a two-year old son together, and that her father-in-law lives with them. According to her statement, her father-in-law was in an accident that prevents him from working and he cannot get out of bed on some days. In addition, she states that her mother is really sick, cries for no reason, and cannot control her mind. She claims she checks on her mother every day and that she can help her mother in ways that her father and others cannot. She states that if her husband departs for Mexico, she would be unable to pay their monthly bills alone and would have to stop working to care for her family. She also states that she gets depressed thinking about moving to Mexico to be with her husband because their son has opportunities as an American citizen and her family is in the United States. She states there are no jobs in Mexico to make a living.

After a careful review of all of the evidence, the record establishes that if the applicant's wife returned to Mexico, where she was born, to avoid the hardship of separation, she would experience extreme hardship. The record shows that the applicant's wife has lived in the United States her entire adult life and that her immediate family, including both of her parents and her three siblings, live in the United States. The record also shows that the applicant's wife is employed full-time. Relocating to Mexico would entail leaving her job and all of its benefits. In addition, the record contains documentation corroborating her claim that she lives with her father-in-law who was injured in an accident at work and continues to have medical issues. Furthermore, a letter from a physician in the record establishes that the applicant's wife's mother is receiving ongoing treatment for depression and anxiety, substantiating the applicant's wife's claim that she needs to emotionally support her mother. Furthermore, the U.S. Department of State has issued a Travel Warning for parts of Mexico, including Michoacan, where the applicant's spouse was born and lived until the age of fourteen. *U.S. Department of State, Travel Warning, Mexico*, dated January 9, 2014. Considering the unique factors of this case cumulatively, the record establishes that the hardship the applicant's wife would experience if she relocated to Mexico to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, the applicant's wife has the option of staying in the United States and the record does not show that she will suffer extreme hardship if she continues to remain in the United States without her husband. Although we are sympathetic to the family's circumstances, if the applicant's wife decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. The record contains a mental health evaluation describing her symptoms including depression, anxiety, inability to sleep, constant worry, poor appetite, and loss of motivation. Regarding financial hardship, the applicant's spouse has submitted an updated Statement of Monthly Income and Expenses, claiming current monthly expenses as $2,285, her monthly income as $1,200, and her husband's monthly income as $1,600. However, the supporting documentation in the record does not sufficiently support these

figures. For instance, although the applicant's wife claims that electricity costs $232 per month, the couple currently owes $232 including a previous amount due, their monthly electricity bill was $98. In addition, although the applicant's wife claims that their monthly phone bill is $325, she submits a recent December 2013 bill from Verizon showing a monthly bill of $108, but an older May 2013 bill from T-Mobile indicating a monthly bill of $217. There is no recent evidence showing the couple continues to have phone service with T-Mobile. Moreover, there is no evidence to support the contention that the couple's auto insurance costs $295 per month, that the outstanding balance on their car is $9,000, or that they have outstanding debt of $9,300. Furthermore, as the field office director stated, the applicant's father lives with them and receives social security disability income. However, the applicant has not addressed to what extent, if any, his father may contribute towards their household expenses. Moreover, there is no evidence in the record to show that the applicant's wife helps financially support her mother. Although the applicant's spouse will suffer some financial hardship, there is insufficient evidence in the record to determine the extent of her hardship. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship the applicant's wife will experience if she remains in the United States amounts to extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Extreme hardship warranting a waiver of inadmissibility can be found 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 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.*; *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, the record does not establish that refusal of admission would result in extreme hardship to the applicant's wife, the only qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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 appeal is dismissed.