U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

H6

[redacted]

DATE: SEP 09 2011 Office: ATLANTA, GA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[redacted]

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, Atlanta, Georgia. 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 Ecuador who was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of 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 and seeking admission within 10 years of his last departure. The applicant's spouse and four children are U.S. citizens and he seeks a waiver of inadmissibility in order to reside in the United States with his family.

The field office director found that the applicant had failed to establish extreme hardship to his spouse and the application was denied accordingly. *Decision of the Field Office Director,* dated September 3, 2008.

On appeal, counsel asserts that the applicant is no longer inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act and his qualifying relatives would experience extreme hardship if he was found to be inadmissible. *Brief in Support of Appeal*, dated October 3, 2008.

The record includes, but is not limited to, counsel's brief, photographs, letters of support, a USCIS memo, prior AAO decisions, tax returns and other financial records, and country conditions information on Ecuador. The entire record was reviewed and considered in rendering a decision.

Section 212(a)(9)(B) 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-
> >
> > . . . .
> >
> > (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.
> >
> > . . . .

The record reflects that the applicant entered the United States without inspection in 1991. He applied for and received an Advance Parole document on August 14, 1998. The applicant does not contend, and USCIS records do not show, that the applicant had an application for adjustment of status pending at the time he received the Advance Parole. The applicant departed the United States on August 14, 1998 and returned to the United States on September 15, 1998. The applicant was paroled into the United States pursuant to section 212(d)(5) of the Act. The applicant's grant of parole expired on September 14, 1999.

The AAO finds that the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provision in the Act, until August 14, 1998, the date he departed the United States. The applicant therefore accrued more than one year of unlawful presence prior to his departure. Counsel does not contest this finding on appeal. In addition, the AAO notes that the applicant again began to accrue unlawful presence after his period of parole expired on September 14, 1999.

Although counsel concedes that the applicant accrued more than one year of unlawful presence prior to his August 14, 1998 departure, counsel states that the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Specifically, counsel states that the applicant's period of inadmissibility began to run on August 14, 1998, the day he departed the U.S. Counsel further states that, since the applicant was paroled back into the United States on September 15, 1998, the period of inadmissibility has continued to run while the applicant has been in the United States. Therefore, counsel contends that the applicant was no longer inadmissible as of August 14, 2008 – ten years from the date of the applicant's last departure from the United States.

It is well settled that when construing a statute, an agency must first look at the language and design of the statute as a whole in order to ascertain the manner in which Congress intended to implement it. *See Massachusetts v. Morash,* 490 U.S. 107, 115 (1989)("In expounding a statute, we [are] not ... guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy"); *K-Mart Corporation* v. *Cartier,* 486 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole."); *FDIC v. McSweeney,* 976 F.2d 532, 537 (9th Cir.1992)("Our goal in construing a statute is to ascertain the intent of Congress in order to give effect to its legislative will.").

Section 301(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009, produced the grounds of inadmissibility under section 212(a)(9) of the Act for aliens previously removed and unlawfully present. Under the plain language of the statute, for inadmissibility under section 212(a)(9)(B)(i) to attach, three elements must be met: a specified period of unlawful presence, departure from the United States and a subsequent application for admission within either three or ten years. The instant matter involves inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which applies to an alien who was unlawfully present for one year or more and again seeks admission within ten years of the date of his or her departure. The applicant does not dispute that he was unlawfully present for more than one year, or that he departed the United States following this period of unlawful presence. The issue is whether the ten years of inadmissibility have "run" and the applicant is no longer inadmissible.

The terms "admission" and "admitted" mean, with respect to an alien, the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." Section 101(a)(13)(A) of the Act, 8 U.S.C. § 1101(a)(13)(A). However, regarding aliens who enter the United States without inspection, Section 235(a)(1) of the Act, 8 U.S.C. § 1225(a)(1), as amended by section 302(a)(1) of IIRIRA, provides:

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) *shall be deemed for purposes of this Act an applicant for admission.* (emphasis added)

Counsel asserts that, as the applicant has applied for adjustment of status, he is deemed to be an applicant for admission. Counsel further states that, because the applicant is "seeking admission" more than ten years after his August, 1998 departure from the United States, he is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

However, counsel's argument fails to account for the significance of departure as the trigger for inadmissibility under section 212(a)(9)(B)(i) of the Act. *See Matter of Rodarte-Roman,* 23 I&N Dec. 905, 910 (BIA 2006). The fact that inadmissibility under this section attaches only upon departure, rather than by virtue of the offending conduct (unlawful presence), reflects that Congress intended this section to prevent aliens who are outside the United States from reentering within the specified period. It reflects that what may seem to be the third and consummating element of inadmissibility under section 212(a)(9)(B)(i), is more accurately described as the consequence Congress attached to unlawful presence: absence from the United States. Regardless of whether the term admission, as used in section 212(a)(9)(B)(i) and elsewhere in the Act, can be construed more broadly than its statutory definition, we do not believe that Congress intended to create a penalty for unlawful presence that can be circumvented by yet another violation of the law.

Thus, although the applicant is considered an applicant for admission by virtue of his application for adjustment of status, this does not excuse him from the consequences imposed by the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. To read the statute as providing an exception to the bar by virtue of subsequent illegal entry and/or unlawful presence in the United States would be to allow one to avoid the punitive effects of a law by violating the law anew, an absurd result contrary to well-established principles of statutory construction. *See Armstrong Paint & Varnish Works v. Nu-Enamel Corporation,* 305 U.S. 315, 333 (1938) ("[T]o construe statutes so as to avoid results glaringly absurd, has long been a judicial function. Where...the language is susceptible of a construction which preserves the usefulness of the section, the judicial duty rests upon this Court to give expression to the intendment of the law."); *U.S. v. McKeithen*, 822 F.2d 310, 315 (2nd Cir. 1987) (quoting *United States v. About 151.682 Acres of Land,* 99 F.2d 716, 721 (7th Cir.1938)) ("[A]ll laws are to be given a sensible construction; and a literal application of a statute, which would lead to absurd consequences, should be avoided whenever a reasonable application can be given to it, consistent with the legislative purpose."). We therefore hold that the inadmissibility under section 212(a)(9)(B)(i) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years under section 212(a)(9)(B)(i)(II).

We are mindful that a separate provision of law, section 212(a)(9)(C) of the Act, renders aliens who are unlawfully present for an aggregate period of more than one year, and who subsequently enter or reenter the United States without being admitted, but this does not preclude our interpretation of section 212(a)(9)(B)(i) as pertaining to aliens who reenter without admission. Inadmissibility under section 212(a)(9)(C)(i) of the Act is permanent, except, as provided under section 212(a)(9)(C)(ii), to an alien "seeking admission more than 10 years after the date of the alien's last departure if, prior to

the alien's reembarkation at a place outside the United States. . ., the Secretary of Homeland Security has consented to the alien's reapplying for admission." The Board has held that the exception authorized by provision is unavailable unless the alien has remained outside the United States for ten years. *See Matter of Torres-Garcia,* 23 I&N Dec. 866, 876 (BIA 2006).

We do not find that our interpretation of section 212(a)(9)(B)(i) of the Act renders superfluous section 212(a)(9)(C). In general, a "statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void, or insignificant." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (quoting 2A Singer, Statutes and Statutory Construction § 46.06, pp. 181-186 rev. 6th ed. 2000). We note, however, that section 212(a)(9)(C) applies to aliens unlawfully present for an *aggregate* period of one year or more, while unlawful presence from multiple stays in the United States is not aggregated in determining inadmissibility under section 212(a)(9)(B). Thus, consistent with what the BIA has referred to as the congressional intent "to compound the adverse consequences of immigration violations," section 212(a)(9)(C) imposes penalties on aliens who accrue more than one year of unlawful presence during multiples stays in the United States, even if time in unlawful presence accrued during any single stay would not render them inadmissible under section 212(a)(9)(B)(i). 23 I&N Dec. at 909.

Furthermore, we are not aware of any authority precluding an interpretation of the various grounds of inadmissibility in the INA such that these grounds overlap, as many clearly do, or holding that section 212(a)(9)(C) provides an exclusive basis of inadmissibility in cases involving reentry without admission after a period of unlawful presence. We do not believe that in creating section 212(a)(9)(C), Congress intended to limit the scope of inadmissibility under section 212(a)(9)(B)(i).

In speaking to the congressional intent of section 212(a)(9) in general, the Board stated:

> The unifying theme of section 212(a)(9) is that all its subparagraphs seek to compound the adverse consequences of immigration violations by making it more difficult for individuals who have left the United States after committing such violations to be lawfully readmitted thereafter. We deem it evident that Congress made departure (rather than commencement of unlawful presence) the event that triggers inadmissibility or ineligibility for relief, because it is departure which marks the culmination of the alien's prior immigration violation and which makes the alien a potential *recidivist.* It is recidivism, and not mere unlawful presence, that section 212(a)(9) is designed to prevent.

Rodarte-Roman, supra at 909 (BIA 2006).

An alien who reenters the United States before the specified period of time has elapsed defeats the punitive and preventive intent of the law. In this case, although the applicant was paroled into the United States on September 15, 1998, his grant of parole expired on September 14, 1999. The applicant failed to depart once his grant of parole expired, and thus commenced another period of unlawful presence that may serve as another basis for inadmissibility under section 212(a)(9)(B) of the Act. *See* Memo. from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Policy and Strategy, U.S. Citizenship and Immigration Serv., to Field Leadership, *Consolidation of Guidance Concerning*

Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act 28 (May 6, 2009). Allowing an alien to meet the time requirement of the bar to his admission while simultaneously accruing additional unlawful presence in the United States is incongruent and rewards recidivism, which we deem contrary to the congressional intent underlying the creation of section 212(a)(9) of the Act.

In general, the departure from the United States of an applicant for adjustment of status is deemed an abandonment of the application constituting grounds for termination, unless the applicant was previously granted advance parole for such absence and was inspected upon returning to the United States. *See* 8 C.F.R. § 245.2(a)(4)(ii)(A); 8 C.F.R. §§ 212.5(c), (f). It should be noted, however, that by granting advance parole, USCIS is not authorizing the alien's departure from the United States so much as providing a means for the alien to return to the United States in spite of inadmissibility. USCIS has taken the position that an alien with a pending adjustment of status application, who has accrued more than 180 days unlawful presence time, triggers the bar to admission if he or she departs the United States subsequent to the issuance of an advance parole document. *See* Memo, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Ac, supra* at 17.

The AAO has interpreted section 212(a)(9)(B)(i)(II) of the Act to allow the ten-year period of inadmissibility to run for aliens with pending adjustment applications who trigger inadmissibility by departing the United States and subsequently reenter pursuant to advance parole before ten years have elapsed. Like an alien who enters without inspection, an alien who enters the United States pursuant to parole has not been admitted and is considered an "applicant for admission" under the Act. Section 212(d)(5)(A) of the Act, 8 U.S.C. § 1182(d)(5)(A). This reflects the longstanding principle that an alien paroled into the United States "[is] still in theory of law at the boundary line and [has] gained no foothold in the United States." *Leng May Ma v. Barber*, 357 U.S. 185, 188-89 (1958) (quoting *Kaplan v. Tod*, 267 U.S. 228 (1925)).

An alien paroled into the United States is not considered to be unlawfully present, unless, as here, the period for which parole was authorized expires or the parole is otherwise terminated. *See* Section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i); 8 C.F.R. § 212.5(e). The Act has provided the Attorney General, and now the Secretary of Homeland Security, the discretion to parole otherwise inadmissible aliens into the United States. *See* Section 212(a)(9)(B)(ii) of the Act; 8 C.F.R. § 212.5(a)-(d). Unlike an alien who reenters without inspection, an alien who reenters pursuant to a grant of parole has entered legally after inspection, is not inadmissible under section 212(a)(6)(A)(i) of the Act, and does not accrue time in unlawful presence. Such an alien is not a recidivist by virtue of this entry, and the purposes of the Act, one of which is to permit physical presence based on a discretionary grant of parole, are not frustrated by allowing the period of inadmissibility to run while the alien is present in the United States. An alien triggering inadmissibility under 212(a)(9)(B) by departing from the United States is not relieved of inadmissibility under that section by virtue of advance parole, and remains "inadmissible" for a period of either three or ten years after the departure. However, it is consistent with the language and purposes of the Act to deem advance parole a "constructive absence" which provides an exception to the rule that the alien must actually remain outside the United States for this entire period.

An alien who has been paroled does not accrue unlawful presence as long as the parole lasts. However, an alien who has been paroled into the United States does begin to accrue unlawful presence when he or she remains in the United States beyond the period of parole authorization. *See* Memo., *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act* p.28. Thus, once the period of parole authorization has expired there is no longer a "constructive absence" and the exception to the rule that the alien must actually remain outside the United States no longer applies.

In the instant case, the applicant departed the United States on August 14, 1998, thus triggering the inadmissibility provision of section 212(a)(9)(B)(i)(II). The applicant reentered the United States on September 15, 1998 pursuant to his grant of advance parole. For the reasons explained above, the AAO finds that the ten-year period of inadmissibility continued to run while the applicant was within his period of authorized parole. The applicant's parole authorization expired on September 14, 1999. Thereafter, the applicant, once again, began to accrue unlawful presence.[1] The AAO finds that the ten-year period of inadmissibility did not continue to run once the applicant's parole had expired and he was unlawfully present in the United States. As noted above, allowing an alien to meet the time requirement of the bar to his admission while simultaneously accruing additional unlawful presence in the United States is incongruent and rewards recidivism, which we deem contrary to the congressional intent underlying the creation of section 212(a)(9) of the Act. Thus, although the applicant's last departure from the United States was more than ten years ago, we find that he has not satisfied the ten-year period of inadmissibility stated in section 212(a)(9)(B)(i)(II) of the Act.

Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of inadmissibility under section 212(a)(9)(B)(i) as follows:

> The Attorney General [now Secretary of Homeland Security] 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or children is

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[1] If the alien has an application for adjustment of status pending, the alien will not accrue unlawful presence while the adjustment application is pending. However, in this case, as noted above, the applicant does not allege that he had an application for adjustment of status pending when his parole expired. Therefore, the AAO finds that the applicant began to accrue lawful presence when he remained beyond the period of his parole authorization.

not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (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 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 the present case, the record reflects that the applicant and his spouse were married on August 21, 2002 and that they have four U.S. citizen children, ages 16, 14, 10 and 9. Hardship to the applicant's children will be considered insofar as it results in hardship to the applicant's spouse.

Counsel states that the applicant's spouse has lived in the United States for 16 years; she has no family in Ecuador; she has never been employed in Ecuador; and uprooting the four children from their schools, community, extra-curricular activities and health providers would have a negative effect on them and a more drastic effect on the applicant's spouse. *Brief in Support of Appeal*, dated October 3, 2008. The applicant's spouse states that she grew up in Ecuador until the age of 15; she has visited Ecuador since then; she has no family in Ecuador and would experience poverty there; and her children would be unable to fulfill their dreams in Ecuador. *Applicant's Spouse's Statement*, dated September 11, 2007. The record includes general country conditions information on Ecuador. However, the record does not include supporting documentary evidence which establishes the degree of financial and/or emotional hardship that the applicant's spouse would experience in Ecuador, or of the hardship that her children would experience. The assertions of counsel do not constitute 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). In addition, going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant has not identified any other hardships that his spouse may face if she were to relocate to Ecuador. The AAO finds that the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse would suffer extreme hardship if she were to relocate to Ecuador.

Counsel states the applicant is the sole provider for his family; his spouse stays at home and cares for their four children; the applicant and his spouse share a mortgage and have a joint bank account, joint credit cards, joint auto insurance and joint life insurance; the applicant's spouse has been out of the work force for more than ten years; and she would not be able to run the applicant's business nor pay the mortgage. *Brief in Support of Appeal*, dated October 3, 2008. The record reflects that the applicant and his spouse are both fifty percent shareholders in [redacted] a contracting company. The AAO notes that the record includes an employment letter, dated June 26, 2006, which states that the applicant's spouse was working for [redacted] as an administrative assistant on a full-time (40 hours per week) basis.

The record contains a psychiatric evaluation of the applicant's spouse which states that, a year prior to the evaluation, the applicant's spouse experienced chest pains, nervousness and difficulty sleeping and that she had to undergo tests for her heart; her physician suggested the symptoms were due to anxiety and this "made sense" to the applicant's spouse because she was anxious about her own application for permanent residence at the time. The evaluation further states that, in the two months prior to the evaluation, the applicant's spouse had relapsed into the same symptoms, minus the chest pains. The evaluation states that the applicant's spouse reported that she was having difficulty sleeping, crying spells, loss of enjoyment of her activities and hopelessness. The applicant's spouse also reported that, without her husband, she would not be able to afford their home, would not be able to care for her children and would not be able to secure a job soon. The applicant's spouse also stated that she abhors the idea of government assistance for her children; and separation would rekindle her own anguish of seeing her parents separate when she was young. *Psychiatric Evaluation*, dated August 23, 2007. The psychiatrist assessed the applicant's spouse with Major Depressive Disorder, moderate, without psychotic features; and concluded that the main psychosocial stressor was the uncertainty of the future of the applicant's spouse and her family and she would likely return to her depression-free status with a favorable decision in this case. The psychiatrist stated that he prescribed medication to the applicant's spouse to assist with her depression. *Id.* The AAO notes that the psychiatric evaluation primarily recounts facts about the applicant's wife's experiences and situation as learned from her. While the AAO values the opinion of a mental health professional, the psychiatric evaluation included in the record does not establish that the applicant's wife is experiencing emotional difficulty that can be distinguished from the common consequences faced when individuals are separated or relocate due to inadmissibility.

The applicant's spouse states that she and her children would suffer emotionally and financially as a result of separation from the applicant. She states that her children would experience grief and sadness; they would feel betrayed and may start doing poorly in school; and they would cry whenever they think of the applicant as they are close to him. The applicant's spouse further states that it would be impossible for her to continue with a happy life without the applicant. In addition, the applicant's spouse states that she will be forced to get a job and it probably would not cover her expenses; she would have to take her children out of their extracurricular activities; she would probably lose her home and be unable to pay her bills; her children are afraid that they are going to lose their father; and her dreams of finishing school would not be fulfilled. *Applicant's Spouse's Statement* dated September 11, 2007.

As noted above, the record reflects that the applicant and his spouse are co-owners of [redacted] and that the applicant's spouse has worked for [redacted] as an administrative assistant. The record does not establish that [redacted] would be unable to operate in the applicant's absence. Nor is there evidence to show that the applicant's spouse would be unable to secure other employment if necessary. Further, there is no evidence in the record to show that the applicant would be unable to secure employment in Ecuador, or that any employment he could acquire would provide him with insufficient income to support himself and his wife and children in the United States. In addition, the record does not contain any evidence of the applicant's or applicant's spouse's current expenses or financial obligations. In the absence of such evidence, the AAO is unable to ascertain whether and to what extent the applicant's departure from the United States will result in financial hardship to his spouse.

As also noted above, the record reflects that the applicant and his spouse have four children, ages 16, 14, 10 and 9. The AAO acknowledges that the applicant's spouse would face significant emotional hardship as a result of the difficulties inherent in caring for four children by herself. However, the AAO also notes that the applicant's spouse has stated that her family lives in the United States and it appears that at least at least one of the applicant's spouse's siblings lives close proximity to the applicant's spouse, potentially mitigating the effects of separation. The AAO acknowledges that the applicant's wife does not wish to become separated from the applicant, and that such separation would create emotional difficulty for her. However, the applicant has not distinguished this separation from the common impacts on family members of an inadmissible alien.

Considering all stated hardship factors in aggregate, the applicant has not shown that his wife will suffer extreme hardship should he depart the United States and she remain.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.