U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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DATE: DEC 19 2012 OFFICE: CIUDAD JUAREZ, MEXICO File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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 under 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 his departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The Field Office Director concluded that the applicant 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. *See Decision of the Field Office Director,* dated April 26, 2010.

The Field Office Director found that the applicant is additionally inadmissible under section 212(a)(2)(B) of the Act, as an alien who has been convicted of two or more offenses where the aggregate sentence of confinement actually imposed is five years or more. The record shows that the applicant's only criminal conviction is for a simple driving under the influence offense in December 2001 for which he successfully completed a diversion program in March 2002. The court dismissed the charge in June 2003 and closed the case in July 2003. The only other conviction appearing in the record is for the traffic offense of driving with a suspended/revoked license for which the applicant was fined $419. The AAO finds that the record does not support that the applicant is inadmissible under section 212(a)(2)(B) of the Act, and hereby withdraws the field office director's findings to the contrary.

On appeal counsel asserts that the field office director failed to consider all evidence of hardship to the applicant's spouse. *See Form I-290B, Notice of Appeal or Motion,* received June 1, 2010.

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; various immigration applications and petitions; two hardship letters; two psychological evaluations; letters from the applicant's children; letters of character reference and support; mortgage and other billing statements; birth and marriage certificates; family photos; the applicant's criminal record; and documents related to the applicant's removal proceedings and voluntary departure. The entire record was reviewed and considered in rendering this 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- ...

> (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 or about 1997 and remained unlawfully until he departed the United States pursuant to a voluntary departure order on August 18, 2008. The applicant accrued unlawful presence in the United States in excess of one year. As the applicant is seeking admission within 10 years of his departure, he 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). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(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 children 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 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 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.

The record reflects that the applicant's spouse is a 33-year-old native and citizen of the United States who has been married to the applicant since September 2001. They have a 10-year-old U.S. citizen son and together raise the applicant's spouse's 14-year-old U.S. citizen daughter from a previous relationship. The applicant's spouse indicates that prior to her husband's August 2008 departure they had never been apart since marrying. She states that she has difficulty sleeping at night and feeling safe at home with the children, has a hard time staying focused, and believes that her parenting has suffered tremendously as she no longer has the time available to devote to her children's emotional support. The applicant's spouse explains that she had a psychological evaluation conducted in February 2009 but was unable to pursue treatment because of cost and time. [redacted] conducted an "updated psychological evaluation" of the applicant's spouse on June 24, 2010, and writes that she appears to be well adjusted and coping reasonably well with the current demands she is facing in life and that her profile suggests she is experiencing situational depression. While [redacted] states that emotionally, the applicant's spouse "is at least mildly depressed" and probably more depressed than she is aware, he diagnoses her with major depression severe. The AAO notes that the 2009 and 2010 evaluations are almost identical with the exception of the diagnosis being revised from

moderate to severe depression. The AAO further notes that despite the updated diagnosis, continues in 2010 to note that if the applicant's spouse's "symptoms worsen she may also benefit from a referral for a medication evaluation." The record does not demonstrate that has found the applicant's spouse's symptoms significant enough to refer her for a medication evaluation even after diagnosing her with major depression severe.

The applicant's spouse states that since September 2008 she has had to increase the hours she works, sometimes to even more than 40 per week, in order to meet her family's financial obligations. She notes that since then she has had to work 40 hours per week and sometimes even more. The applicant's spouse explains that her commute is approximately 45 minutes each way, she is unable to secure employment closer to home, and she must rely on her mother to provide child care in her absence. She says this is difficult for her mother whom she maintains is diabetic and in treatment for anxiety, but submits no corroborating medical evidence. The applicant's spouse adds that if she were to seek outside childcare it would cost in excess of $800 monthly. Corroborating evidence has not been submitted. She states that she is currently also supporting the applicant in Mexico but submits no corroborating evidence. Going on record without supporting documentation is not sufficient to 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)). While copies of a mortgage statement and other bills have been submitted, no documentary evidence has been provided to demonstrate the applicant's spouse's current income in relation to her expenses or showing the applicant's income prior to his departure from the United States such that his previous economic contribution to the household expenses may be determined. While the AAO recognizes that the applicant's spouse has likely experienced some reduction in overall income since the applicant's departure, the evidence in the record is insufficient to establish that she is unable to meet her financial obligations in his absence.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including economic and emotional/psychological difficulties and notes that, while not insignificant, the hardships described are not distinguished beyond those ordinarily associated with a spouse's temporary inadmissibility. The AAO acknowledges that separation from the applicant has and will continue to cause various difficulties for his U.S. citizen spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The possibility of the applicant's spouse relocating to Mexico has not been addressed in the record and thus, the AAO is unable to speculate in this regard. Accordingly, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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 as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.