**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals*
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

#6

[redacted]

DATE: DEC 19 2012 OFFICE: PANAMA CITY FILE: [redacted]

IN RE: [redacted]

APPLICATION: 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 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 in accordance with the instructions on 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, Panama City, Panama, and 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 to the United States 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 more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative, as a spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with her spouse and child.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated July 28, 2011.

On appeal, counsel for the applicant asserts that the applicant's spouse is suffering emotional hardship due to separation from the applicant, but that he cannot relocate to Ecuador to reside with his family because he financially supports them with his income from the United States.

In support of the waiver application and appeal, the applicant submitted identity documents, letters from the applicant and her spouse, psychological evaluations of the applicant's spouse, psychological letter and school letter concerning the applicant's daughter, reports on conditions in Ecuador, and a letter from the applicant's pastor. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, 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.
>
> . . .
>
> (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.

The applicant is a native and citizen of Ecuador who claims to have entered the United States without admission or parole in August 1995. The applicant subsequently departed from the United States on January 23, 2010. Accordingly, she accrued over one year of unlawful presence in the United States, and she is seeking readmission within 10 years of her last departure. Thus, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility on appeal.

A waiver of inadmissibility 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 her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 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 is a 43 year-old native and citizen of Ecuador. The applicant's spouse is a 36 year-old native of Ecuador and citizen of the United States. The applicant is currently residing in Ecuador with their child and the applicant's spouse is residing in Patchogue, New York.

The applicant's spouse asserts that he is severely depressed due to the absence of the applicant and their child. The applicant's spouse contends that he is also concerned because of his daughter's difficulty in acclimating to Ecuador and because of Ecuador's country conditions. The applicant's spouse asserts that he is not sleeping much, does not have the desire to eat, and is sometimes unable to go to work. The record contains two psychological evaluations concerning the applicant's spouse from March 12, 2010 and August 18, 2011. The 2010 evaluation states that the results from evaluating the applicant's spouse indicate that he is suffering severe and debilitating depressive and anxiety symptoms. Further, the applicant's spouse had suicidal thoughts, but would not act on them for the sake of his family. The 2011 evaluation states that the applicant's spouse exhibits chronic symptoms of depression and indicates the same diagnostic impressions as the previous evaluation. The record also contains a letter from the

applicant's daughter's high school in Ecuador stating that she is in a state of depression due to the change in her social environment, separation from her father, and trouble adapting to her school environment because of a lack of fluency in the Spanish language. It is noted that the letter originates from a bilingual high school in Ecuador and there is no indication that the applicant's child is unable to receive an education in the English language. The record also contains a letter from a psychoanalyst in Ecuador stating that the psychoanalyst met with the applicant's child due to her depressive state. It is noted that the applicant's child's high school has not submitted appropriate qualifications to support its medical determinations concerning the applicant's child's psychological state. Further, the letter from the psychoanalyst does not make an affirmative diagnosis concerning the applicant's child and does not make any recommendations for treatment. It is acknowledged that separation from a spouse or child nearly always creates a level of hardship for both parties and the record indicates that the applicant's spouse is suffering emotional hardship upon separation from the applicant. However, it is noted that the record indicates that the applicant's spouse is currently employed as a construction worker and the record does not contain any information from his employer indicating that he is experiencing difficulty performing his work. There is no indication that the emotional hardship suffered by the applicant's spouse is so serious that he has been unable to continue his work and support of his family. In the aggregate, there is insufficient evidence in the record to demonstrate that the applicant's spouse is suffering from hardship due to separation from the applicant that is beyond the common results of the inadmissibility or removal of a spouse.

The applicant's spouse asserts that he cannot relocate to Ecuador because he would be unable to financially support his family. The applicant's spouse contends that he would be unsuccessful in securing employment in Ecuador because he no longer knows anybody in that country and has no connections for positions. The applicant's spouse also asserts that he would be concerned about safety in Ecuador. The record contains background information concerning country conditions in Ecuador, including Country Specific Information from the U.S. Department of State. It is noted that there are no travel advisories concerning Ecuador from the Department of State and the region of Ecuador in which the applicant currently resides is not listed as an area with particular safety concerns. The applicant is currently residing with her family members in Ecuador. It is noted that the applicant's mother resides in Ecuador, as well as the applicant's two adult children. As such, it follows that the applicant's spouse would have familial connections to Ecuador through the applicant. The record also indicates that the applicant's spouse is a native of Ecuador. Further, the record does not contain any information concerning the extent of the applicant's financial obligations in Ecuador or documentary evidence that she has been relying upon funds from her spouse while residing in Ecuador. In this case, the record contains insufficient evidence to show that the hardships faced by the qualifying relative, if he were to relocate to Ecuador, rise to the level of extreme hardship.

Although the depth of concern and anxiety over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not

intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

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 to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. 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 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.