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[REDACTED]

DATE: **DEC 19 2012**

Office: SAN DIEGO (CHULA VISTA) 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, 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 request 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,

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Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Diego, California, 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 seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident spouse.

The Director concluded that the applicant had failed to demonstrate extreme hardship to her lawful permanent resident spouse and denied the application accordingly. *See Decision of District Director*, dated May 20, 2011.

On appeal, counsel for the applicant states that while the applicant has been in Mexico, the applicant's lawful permanent resident spouse has experienced extreme hardship due to separation from his wife and children and that he will continue to do so if the waiver application is denied. *Counsel's Brief*, dated August 29, 2011.

The record includes, but is not limited to: statements from the qualifying spouse and his relatives, co-worker, and friends; a psychological evaluation; medical records; financial records; and an article on Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

....

(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 entered the United States without inspection in October 2004 and remained without authorization until September 2010. Therefore, the applicant accrued more than one year of unlawful presence and is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from her departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act as the spouse of lawful permanent resident. In order to qualify for this waiver, however, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. Hardship to the applicant or the applicant's U.S. citizen children is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. 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-Morales*, 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 of Immigration Appeals (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 U.S. 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 v. INS*, 138 F.3d 1292, 1293 (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.

On appeal, counsel asserts that the qualifying spouse would suffer extreme hardship if the inadmissibility waiver were denied. He states that the qualifying spouse is suffering from depression due to his separation from his wife and children. Counsel also claims that the qualifying spouse has had difficulties at work, has felt isolated, has been concerned about his children’s health problems, and has struggled to support himself and his family in Mexico. Additionally, counsel states that the qualifying spouse may have a learning disability, which could negatively affect his ability to maintain a household on his own and to find work in Mexico. *Counsel’s Brief*.

The AAO finds that the qualifying spouse would suffer extreme hardship upon separation from the applicant if her waiver application were denied. The qualifying spouse states in his letters that he has been depressed due to the absence of his family and that he is very concerned about the wellbeing of his wife and children in Mexico. He also indicates that it has been difficult for him to support himself and to pay his own medical bills while also sending money to his family in Mexico. A psychological evaluation confirms that the qualifying spouse is suffering from clinical depression due to separation from and concern about his family, and that he is taking prescription antidepressant medication. *Evaluation Report*, dated July 6, 2011; see also *Prescription Receipts*.

The psychological report also indicates that the qualifying spouse is struggling financially and that his depression has interfered with his job performance. *Evaluation Report*. Multiple letters in the record from the qualifying spouse's co-worker, friends, and family members also confirm that the qualifying spouse has appeared depressed, sad, and generally unwell in the absence of his wife and children. *Letters from* [REDACTED]

[REDACTED] and [REDACTED]. The documentation in the record establishes that the qualifying spouse's clinical depression, his need for prescription medication, and the effects of his depression on his work and daily life constitute extreme hardship.

However, the applicant has failed to demonstrate that her lawful permanent resident spouse would suffer extreme hardship on relocation to Mexico. The qualifying spouse claims that he would have difficulty finding a job in Mexico and that his family had a better quality of life in the United States. However, economic disadvantage is a common result of inadmissibility or removal and does not typically reach the level of extreme hardship necessary to merit a waiver. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). While the psychological evaluation also indicates that the qualifying spouse may have a learning disability which could affect his ability to find work, this claim is unsubstantiated. There is no evidence to indicate that the qualifying spouse has been diagnosed with a learning disability, nor is there information to demonstrate that such a diagnosis would prevent him from finding work in Mexico despite the fact that he has held long-term employment in the United States. *See Evaluation Report*.

The qualifying spouse also states that conditions in Mexico are dangerous. However, it is reasonable to conclude that he would join the applicant in her hometown of Abasolo, Guanajuato, which is not the subject of any safety advisory by the Department of State. *U.S. Department of State, Travel Warning: Mexico*, dated February 8, 2012. The applicant submitted one newspaper article regarding the killing of a young girl in the state of Guanajuato, but this article is insufficient to establish that conditions in Guanajuato would be so unsafe as to result in extreme hardship to the qualifying relative.

The qualifying spouse also asserts that his children are suffering from illnesses relating to their difficulty adjusting to life in Mexico and that they have diminished educational opportunities there. However, the children are not qualifying relatives for purposes of a waiver under section 212(a)(9)(B)(v), so hardship to them can only be considered insofar as it affects the qualifying spouse. Their medical issues – “dermatological conditions,” “intestinal problems,” and “allergic conjunctivitis” – appear to be minor. The medical documentation provides no detail which would support a finding of extreme hardship to the qualifying spouse as a result of his children's health issues. *See Letters from* [REDACTED] dated October 20, 2010. Moreover, inferior educational opportunities are considered a common result of removal or inadmissibility and do not reach the level of extreme hardship. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

We can find extreme hardship warranting a waiver of inadmissibility 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.*; also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). Therefore, the AAO finds that the applicant has failed to establish extreme hardship to her lawful permanent resident 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 an 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.