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

[redacted]

#6

DATE: DEC 2 1 2012 Office: CHICAGO, IL FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C).

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, Chicago, Illinois. 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The record also supports that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of her last departure. The applicant's spouse is a United States citizen and the applicant seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *See Decision of the Field Office Director*, dated June 24, 2011.

On appeal, counsel asserts that the applicant's spouse would experience extreme hardship if the applicant is not granted a waiver of inadmissibility.

The record includes, but is not limited to counsel's brief, the applicant's statements, the applicant's spouse's statements, medical records, financial records, news articles and various immigration application forms. The entire record was reviewed and considered in rendering a decision on the appeal.

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.
>
> . . . .
>
> (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 [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.

The applicant testified under oath and the record supports that she entered the United States in 1992 and remained until December of 1999. The applicant then returned to the United States in February 2000 with a B-2 visa and remained beyond the expiration of her visa, until a departure on an unknown date. The applicant re-entered the United States for the last time in December of 2005 with a B-2 visa. The applicant stayed beyond her authorized periods in B-2 status and no data was found regarding the entry in 1992. Based on the evidence in the record, the applicant is 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 readmission within 10 years of her last departure from the United States.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) 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.

The applicant indicates that she is not inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as she did not willfully misrepresent a material fact. The applicant testified under oath during an adjustment interview that she first entered the United States in 2005 when in fact there were earlier entries in 1992, and 2000 and was therefore found inadmissible under section 212(a)(6)(C)(i) of the Act8 U.S.C. § 1182(a)(6)(C)(i),. The applicant was asked during the interview about all entries to the United States and according to the record initially maintained that she did not in fact enter prior to December 28, 2005. The applicant later indicated that she did not understand the question as it was asked through the interpreter, and instead thought she was being questioned about only her last entry into the United States. The records also indicate that the applicant's son was born in the United States in December of 1997. It can therefore be concluded that the applicant entered the United States at some point prior to December of 1997. There is no clear information provided as to when she departed after this entry. Additionally, the applicant's passport indicated an entry in February of 2000 with a visitor's visa. The records further demonstrate that this visa expired in May of 2000 and the applicant lived in the United States beyond the permitted period and departed some time later. The applicant last entered in December of 2005 with a visitor's visa. The applicant was found to have willfully misrepresented material facts for the purpose of receiving immigration benefits under section 212(a)(6)(C)(i) of the Act, based on the records of entries and the misrepresentation of her unlawful presence periods in excess of one year. The unlawful presence also leads to an additional ground of inadmissibility based on 212(a)(9)(B)(i)(II) of the Act, and

concealing her history of entires to the United States shut off the material line of inquiry regarding whether she was inadmissible under this section.

The applicant was therefore found to be inadmissible based on section 212(a)(6)(C)(i) of the Act as one who willfully misrepresents a material fact for the purpose of receiving immigration benefits and section 212(a)(9)(B)(i)(II) of the Act for maintaining an unlawful presence in the United States in excess of one year and seeking readmission within 10 years of her last departure. The AAO concurs in this finding.

Section 212(i) of the Act provides, in pertinent part:

> (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 resident spouse or parent of such an alien.

Section 212(a))(9)(B)(v) of the Act provides in pertinent part:

> 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.

A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent resident spouse or parent of the applicant. Hardship to the applicant and her 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 the 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 1292 (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.

The applicant's spouse states that he and the applicant have remained in a long-term and committed relationship. The applicant's spouse indicates that the applicant takes care of all of the household details so that he can provide for the family financially. The applicant's spouse indicated that the applicant is his source of emotional stability and if they were separated he would become very depressed. The applicant's spouse states that he has suffered various illnesses such as diverticulitis and the applicant continues to assist him during those periods of ill health. The applicant's spouse further indicated that his wife reminds him to take all of his medications and ensures he attends his medical appointments. The applicant's spouse indicated that he could not return to Mexico to live with the applicant because: he would have difficulty finding employment, his father recently committed a crime and the victim's family may seek retribution, he would be unable to receive comparable medical care, and his son would not have the desired future opportunities in that country.

The evidence offered does support the assertions that the qualifying spouse would suffer extreme hardship if he were to relocate to Mexico at this time. The documentation offered regarding recent conditions in Mexico demonstrates that the applicant's spouse would be in particular danger if he were to return to live in his hometown of Ciudad Camargo with the applicant, due to information of credible threats recently made against his family members after his father and brother were allegedly involved in a fatal crime.[1] Moreover, the area where the applicant is originally from would also pose challenges. The AAO notes that the February 8, 2012 Department of State Travel Warning for Mexico details general safety issues, crime, and narco-related violence, specifically mentioning these problems in Chihuahua.

However, the applicant has not demonstrated that separation from her would cause extreme hardship to her spouse. While we acknowledge the assertions of the applicant's spouse that he may experience some emotional and economic difficulties based on separation from the applicant if she returns to Mexico and he resides in the United States, there is insufficient evidence in the record to demonstrate that these issues would rise to the level necessary for a finding of extreme hardship. According to the information provided, the applicant's spouse has remained the sole source of their outside income since the inception of the marriage. In addition, the applicant has in fact returned to Mexico for lengthy periods of time during their relationship and there was no evidence submitted to indicate that the applicant's spouse did not continue to support her during those times or that they were unable to continue a line of communication with each other.

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

[1] An article posted in Radiz Periodico Digital on October 11, 2011 indicates [redacted] aka [redacted] and his son (the father and brother of the qualifying spouse), were detained in relation to the shooting death of an individual in Ciudad Camargo .

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). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. Having found the applicant statutorily ineligible for relief under sections 212(a)(9)(B)(v) and 212(i) of the Act, no purpose would be served in discussing whether she merits a favorable exercise of discretion

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