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

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

**PUBLIC COPY**

U.S. Citizenship and Immigration Services

[redacted]

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Date: FEB 16 2012 Office: EL PASO, TEXAS 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 (the 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 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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, El Paso, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days but less than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated October 16, 2009.

On appeal, counsel contends the applicant was not unlawfully present because he has had a B1/B2 visa since at least 1999. Counsel contends the applicant "had been self employed in the construction busine[ss] and had no need to immigrate to this country. Thus the applicant should not have been asked for a waiver." Counsel also contends that the waiver was arbitrarily and capriciously denied, particularly considering the couple's children are school aged.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [redacted] indicating they were married on June 4, 1999; copies of the birth certificates of the couple's three U.S. citizen children; a letter from [redacted] copies of tax returns; a letter from the applicant's employer; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

> (i) In General - Any alien (other than an alien lawfully admitted for permanent residence) who -
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> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.
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> . . . .

> (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 Attorney General [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.

In this case, the record shows that the applicant was arrested on September 11, 2005, for defective equipment on his license plate. *Record of Deportable/Inadmissible Alien (Form I-213)*, dated September 13, 2005. The record further shows that the applicant admitted during his arrest that he had entered the United States on February 1, 2005, without inspection. *Id.* The applicant voluntarily departed the United States on September 13, 2005, and returned to Mexico. *Id.* The record further shows that the applicant re-entered the United States on November 1, 2005, using a B1/B2 visa and has since remained in the United States. Therefore, the record shows that the applicant accrued unlawful presence from February 2005 until his departure in September 2005, a period of over 180 days but less than one year. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act.

Counsel's contention that the applicant is not inadmissible because he had a B1/B2 visa since 1999 and that he had no need to immigrate to the United States is unpersuasive. Although the record shows that the applicant did, indeed, have a B1/B2 visa that was issued on March 17, 1999, and which did not expire until March 16, 2009, the record shows that he did not present this visa in order to be lawfully admitted into the United States in February 2005. Because the applicant entered the United States without inspection, and remained in the United States for more than seven months, he is inadmissible under section 212(a)(9)(B)(i)(I) of the Act.[1]

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

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[1] According to the applicant's Biographic Information form (Form G-325A), dated March 21, 2003, the applicant indicates he lived in the United States from January 2000 to the present. Specifically, the applicant states he lived in El Paso, Texas, from January 2000 until February 2002, and in Socorro, Texas, from February 2002, until the present, March 21, 2003. There is no indication in the record that the applicant was lawfully admitted to the United States in January 2000. Therefore, the AAO notes that in the event the applicant files any future applications, the applicant's previous entries into the United States should be further examined.

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 this case, the applicant's wife, [redacted] states that she has lived in the United States since 1984. She states that she and her husband have three children between the ages of four and thirteen

years old and that she is a housewife who cares for their children. As such, she contends that she and their children completely rely on the applicant for financial support. In addition, she states that she is reluctant to move to Mexico because her children are school aged and it would be impossible for them to go to school in Mexico. She also contends she fears the criminal activity in Mexico. *Letter from* [redacted] dated September 22, 2009.

After a careful review of the record, the AAO finds that if Ms. [redacted] moved back to Mexico to be with her husband, she would experience extreme hardship. The AAO recognizes [redacted] contention that she has lived in the United States since 1984, and that the couple has three U.S. citizen children. In addition, according to Ms. [redacted] Biographic Information form (Form G-325A), both of her parents also reside in El Paso, Texas. *Biographic Information form (Form G-325A)*, dated May 13, 2009. Moreover, the record shows that Ms. [redacted] was born in Ciudad Juarez and that the applicant is also from the state of Chihuahua. The AAO takes administrative notice that the U.S. Department of State urges U.S. citizens to defer non-essential travel to parts of Mexico, particularly Ciudad Juarez:

> The situation in the state of Chihuahua, specifically Ciudad Juarez, is of special concern. Ciudad Juarez has the highest murder rate in Mexico. Mexican authorities report that more than 3,100 people were killed in Ciudad Juarez in 2010. . . . You should defer non-essential travel to Ciudad Juarez and to the Guadalupe Bravo area southeast of Ciudad Juarez. U.S. citizens should also defer non-essential travel to the northwest quarter of the state of Chihuahua. . . .

*U.S. Department of State, Travel Warning, Mexico*, dated April 22, 2011. Considering these unique circumstances cumulatively, the AAO finds that the hardship Ms. [redacted] would experience if she moved back to Mexico is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, Ms. [redacted] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the family's circumstances, if [redacted] decides to stay in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Although [redacted] claims she is completely financially dependent on her husband, the record shows tha[redacted] has been, and may continue to be, self-employed. According to her Biographic Information form (Form G-325A), she has been self-employed from January 2005 to the present. *Biographic Information form (Form G-325A), supra* (indicating her occupation as "owner"). In addition, according to tax returns in the record, Ms. [redacted] earned gross receipts or sales of $41,928 in her construction drywall business. *2008 Profit or Loss From Business (Schedule C, Form 1040); see also 2008 U.S. Individual Income Tax Return (Form 1040)* (stating her occupation as "self employed" and indicating business income of $20,138); *see also Affidavit of Support Under Section 213A of the Act (Form I-864)*, dated May 13, 2009 (stating she is self-employed as a subcontractor and earns an annual income of $18,715). Furthermore, there is no evidence addressing the family's regular, monthly expenses, such as rent or

mortgage. Although the AAO does not doubt that Ms. [redacted] will suffer some financial hardship upon her husband's departure, without consistent and more detailed information regarding their income and expenses, there is insufficient evidence showing that the hardship [redacted] will experience will be extreme. In sum, the record does not show that Ms. [redacted] hardship would be extreme, or that the applicant's situation is unique or atypical compared to other individuals separated as a result of inadmissibility or exclusion. *See Perez v. INS, supra* (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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, 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.