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

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U.S. Citizenship and Immigration Services

[redacted]

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DATE: JUL 2 7 2012 Office: MEXICO CITY (CIUDAD JUAREZ) FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and previous decisions of the district director and AAO will be affirmed.

The applicant is a native and citizen of Mexico. He 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 one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He 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).

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 17, 2006. The AAO found the record to contain sufficient evidence that the applicant's spouse would experience extreme hardship upon relocation in the United States, but concluded there was insufficient evidence to establish extreme hardship if she remained in the United States. *AAO Decision*, dated November 2, 2009. The AAO dismissed the appeal accordingly.

On motion, the applicant's spouse asserts that she will experience extreme emotional, economic and physical hardship if the applicant's waiver is denied. *Declaration of Spouse*, received October 5, 2009.

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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> . . . .
>
> (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 indicates that the applicant entered the United States without inspection in 1992 and remained until he departed in August 2005. Therefore, the applicant was unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provision of the Act until August 2005, and is now seeking admission within ten years of his last departure

from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

The record contains, but is not limited to, the following evidence: statements from the applicant's spouse; educational development reports for the applicant's daughter; employment letters for the applicant's spouse; pay stubs and bank statements for the applicant and his spouse; copies of utility invoices and amounts owing for medical and other bills; copies of travel itineraries for bus travel to Mexico; country conditions materials on Mexico, including articles on the health conditions and crime; photographs of the applicant and his family; copies of money transfer receipts; and copies of the birth certificates for the applicant and his spouse. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

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 his children 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 Chief, AAO, previously concluded that the applicant's spouse would experience extreme hardship upon relocation to Mexico. The record is well-documented in this regard and the AAO finds no basis to disturb its previous finding on this issue.

The Chief, AAO, also concluded, however, that there was insufficient evidence to establish that the applicant's spouse would experience extreme hardship if she were to remain in the United States. In a decision dated November 2, 2009, the Chief observed that the applicant had failed to establish that

the financial impact on his spouse would rise above the common economic hardships associated with separation, or that the applicant's spouse needed physical assistance to care for their daugther due to her language and speech delays.

On motion, the applicant's spouse submits a statement repeating her previous assertions, stating that she will have to work two jobs in order to meet her financial obligations, that she and her daughters are experiencing emotional stress due to separation, and that continued separation will result in an emotional impact that will affect her ability to concentrate on her job and care for her children. The applicant's spouse also asserts that her oldest daughter has asthma and must stay at home when her condition flares.

The AAO observes that the applicant's spouse has failed to adequately address the Chief's prior conclusions regarding the need for the applicant's physical presence to care for her daughters. There is no indication that the applicant's spouse is unable to meet the physical demand of caring for her daughters, or that her daughter is unable to receive medical treatment or other needed therapy due to the applicant's inadmissibility.

The applicant has submitted additional records relating to the financial impact of his departure. These records include pay stubs, past due notices and bank statements. Several collection notices in the record and bank statements containing insufficient funds fees support that the applicant's spouse is experiencing some financial impact due to the applicant's absence. However, the evidence submitted is not sufficiently probative to establish that financial impact on his spouse rises to the level of extreme. There are no tax returns establishing the applicant's spouse's annual income or any documentation that she is working more than one job as has been asserted. Nonetheless, the AAO will give the financial impact on the applicant's spouse consideration when aggregating the impacts on her due to separation.

In relation to the applicant's spouse's assertion that she will experience emotional hardship due to separation from the applicant, the AAO notes that the record does not contain any evidence distinguishing the emotional impact on her from that which is commonly experienced by the relatives of inadmissible aliens who remain in the United States. This is not to say that the applicant's spouse will not experience emotional impacts due to separation, but merely that the record does not indicate these impacts rise above the normal consequences of inadmissibility.

The record contains a statement from [redacted] dated September 24, 2009, stating that the applicant's older daughter has been diagnosed with intermittent asthma. However, the statement does not indicate the severity of her condition, to what degree it impacts her ability to function or attend school, or what treatment is needed to address her condition. Without evidence which indicates the degree and severity of her daughter's condition, the AAO cannot determine that the impacts related to this condition rise to such a degree that it will create substantial additional hardship for the applicant's spouse.

The AAO notes that the record also contains Individual Educational Plans for the applicant's younger daughter. The applicant's spouse previously asserted that her daughter contracted viral meningitis when she was two years old and that she was developmentally delayed, inferring that the two conditions were related. Upon examination, however, the AAO notes that there is no basis to conclude that the applicant's daughter's language delays are related to any neurological or medical condition. The record does not contain any medical documentation indicating that the applicant's daughter was treated for viral meningitis, or that she experienced any permanent impacts arising from the condition. In addition, while the applicant's spouse has characterized her daughter as developmentally delayed, there is no medical documentation which states that her delays are based on any medical condition. The Individual Educational Plans submitted into the record indicate the child's developmental delays are related to language and speech skills, and recommend that the child receives a weekly session focused on language and speech development.

Based on this evidence, the AAO does not find the applicant's children are experiencing physical or medical impacts which are related to the applicant's inadmissibility, which are exacerbated by separation from the applicant or which rise to such a degree that they elevate the hardship on the applicant's spouse to an extreme level.

Although the applicant has established that his spouse may experience hardship rising to the extreme hardship upon relocation, the record does not contain sufficient evidence to establish that the impacts on the applicant's spouse upon separation, even when considered in the aggregate with the common hardships due to separation, rise to the level of extreme.

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). 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the prior decision of the AAO will be affirmed, and the application will remain denied.

ORDER: The motion is granted, the prior decision of the AAO is affirmed, and the application remains denied.