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]

H6

Date: OCT 19 2012 Office: PANAMA CITY 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 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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City. 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 Colombia who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more 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 in order to reside with her husband and child 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 January 27, 2011.

On appeal, counsel contends the applicant established extreme hardship, particularly considering the applicant's husband has lived in the United States for almost 25 years, most of his family lives in the United States, and he is the sole caretaker of his mother who has cancer.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted] indicating they were married on June 27, 2006; a copy of the birth certificate of the couple's U.S. citizen daughter; an affidavit from [redacted], a letter from the applicant; a letter from [redacted] employer; copies of tax returns, pay stubs, bills, and other financial documents; documents from [redacted] mother's physician; 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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> . . . .
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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.
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> . . . .
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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, and counsel concedes, that the applicant's previous petition based on her first marriage was denied in March 2008, and that the applicant remained in the United States without authorization until her departure in September or October 2009. The applicant accrued unlawful presence of more than one year. She now seeks admission within ten years of her 2009 departure. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of her last departure.

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.

In this case, the applicant's husband, [redacted] states that since his wife's departure from the United States, he and the couple's six-month old daughter have been suffering from extreme financial and emotional hardship. He states that he cannot begin to imagine living without his wife and that their daughter needs both parents. He states he has worked for the same employer since February 1998 and if his wife does not return from Colombia, he cannot afford to support two households on his income alone. In addition, according to [redacted], his seventy-two year old mother is a cancer survivor and resides with him. He contends they are very close and that his mother depends on him for emotional and financial support. Furthermore, [redacted] contends that if he relocated to Colombia to be with his wife, they would become very poor people and it would be hard for him to find a job in Colombia. Moreover, [redacted] states that Colombia is not safe for U.S. citizens and he fears they would be victims of crime.

After a careful review of the record, there is insufficient evidence to show that the applicant's husband, [redacted], has suffered or will suffer extreme hardship if his wife's waiver application were denied. If [redacted] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding financial hardship, although the AAO does not doubt that [redacted] will suffer some financial hardship, there is insufficient information in the record to show that his hardship is extreme. According to tax documents in the record, [redacted] earned $57,176 in 2007. There is no indication in the record that he is late or having difficulty paying his bills. Neither the applicant nor her husband address whether the applicant has sought employment in Colombia and there is no suggestion in the record that any financial hardship [redacted] may experience is unusual or atypical compared to others in similar circumstances. To the extent [redacted] contends the couple's daughter needs both parents, although the AAO is sympathetic to the family's circumstances, the only qualifying

relative in this case is [redacted] and the record does not show that any hardship the couple's daughter may experience causes extreme hardship to [redacted] In sum, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Even considering all of the factors in this case cumulatively, there is insufficient evidence showing that the hardship [redacted] has experienced or will experience amounts to extreme hardship.

Furthermore, the record does not show that [redacted] would suffer extreme hardship if he returned to Colombia to be with his wife. The record shows that [redacted] was born in Colombia and according to his Biographic Information form (Form G-325A), dated September 16, 2009, both of his parents continue to live in Colombia. Although [redacted] contends in his affidavit, also dated September 16, 2009, that his mother lives with him in the United States, documentation in the record shows that she receives medical care from [redacted] in Colombia. There is no letter or affidavit from [redacted] mother in the record. Therefore, there is inconsistent information in the record regarding where [redacted] mother resides and the extent to which he supports her. The AAO notes that according to the applicant's Form G-325A, both of the applicant's parents also continue to reside in Colombia. As such, the record shows that [redacted] still has family ties in Colombia. Regarding [redacted] contention that he would be unable to find employment in Colombia, counsel cites high unemployment rates and the lack of unionization to maintain fair wages in Colombia. Although the AAO acknowledges that [redacted] standard of living may decrease in Colombia, the record does not show that his situation is unique or atypical. The AAO notes that according to [redacted] Form G-325A, he has been employed as an electrical engineer since 1998. There is no evidence addressing whether an individual with [redacted] skills and training would be unable to find employment in Colombia. Furthermore, although the AAO recognizes the U.S. Department of State has issued a Travel Warning reminding U.S. citizens of the dangers of travel to Colombia, *U.S. Department of State, Travel Warning, Colombia,* dated October 3, 2012, the Travel Warning alone is insufficient to show extreme hardship. In sum, the record does not show that [redacted] readjustment to living in Colombia would be any more difficult than would normally be expected. Even considering all of the evidence cumulatively, the record does not show that [redacted] hardship would be extreme, or that their situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra.*

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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.