U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H6

DATE: OCT 2 3 2012

OFFICE: MEXICO CITY, MEXICO [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, Mexico 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 under 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 his departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident spouse and U.S. citizen granddaughter.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* dated February 8, 2011.

On appeal the applicant's spouse asserts that she would suffer extreme hardship if the waiver is not granted. *See Form I-290B, Notice of Appeal or Motion,* received March 17, 2010.

The record contains, but is not limited to: Form I-290B and attached statement from the applicant's spouse; several hardship letters from the applicant's spouse and a statement from the applicant; a letter from the applicant's stepdaughter; a credit report and tax returns; rent, billing and banking statements; birth and marriage certificates; and a travel warning for Mexico. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act provides:

> (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.

The record reflects that the applicant entered the United States without inspection in July 1996 and remained unlawfully until he departed the United States voluntarily in August 2010. The applicant accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions under the Act, to August 2010, a period in excess of one year. As the applicant is seeking admission within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(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. 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 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 record reflects that the applicant's spouse is a 50-year-old native of Mexico and lawful permanent resident of the United States who has been married to the applicant since July 2002. She indicates that the applicant has helped her raise her children and grandchildren as his own, is hardworking, credit-worthy, pays his taxes and is a person of good moral character. The applicant's spouse writes that she injured herself in a 2010 fall and depends on the applicant's assistance with domestic duties, caring for their granddaughter, lifting, and running errands. The applicant states that his spouse was unable to walk for a week after being injured and counts on his assistance with cleaning, cooking, lifting and moving heavy things, and caring for their granddaughter. The record contains no documentary evidence addressing the nature or extent of the applicant's spouse's injuries or any ongoing limitations related thereto. The applicant's spouse asserts that her plans for education and training will be disrupted if her husband is not present at home. No details have been provided or documentary evidence submitted concerning such plans. The applicant's spouse explains that her now 4-year-old granddaughter lives with her, and before the applicant's departure he cared for her in the evenings while the applicant's spouse and daughter worked. She states that she has had to miss work because her granddaughter cries for the applicant and will not accept an alternate care provider. No corroborating documentary evidence has been submitted or details provided concerning any economic implications related to such circumstances.

The applicant contends that his longtime employer in the United States gave him until September 13, 2010 to return to work and indicates that his employer is suffering financial hardship in his absence. However, the applicant has not related difficulties encountered by his employer to challenges faced by his spouse. The applicant's spouse indicates that she is no longer able to manage the financial responsibilities she shared with the applicant, can no longer make car payments but cannot afford to lose her source of transportation, and that she sends money to the applicant in Mexico all of which has caused her credit-worthiness to decline. Corroborating documentary evidence has not been submitted. While the record contains income tax returns for 2007, 2008 and 2009, these demonstrate consistent earnings over a 3-year period before the

applicant departed to Mexico and no financial documentation has been submitted which demonstrates the current income of the applicant's spouse in his absence. Though the record contains statements from two bank accounts, a rent statement, a [redacted] bill and a receipt from [redacted] the AAO cannot determine from these the extent of the applicant's spouse s current ongoing expenses. While the AAO recognizes that the applicant's departure from the United States has resulted in a reduction in overall income to the applicant's spouse, the evidence in the record is insufficient to establish that she is unable in his absence to meet her financial obligations during the remainder of his temporary period of inadmissibility.

The AAO acknowledges that separation from the applicant has and will continue to cause various difficulties for her U.S. citizen spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant states that it is too dangerous for his family to travel to Mexico and he does not want to expose them to the danger and violence in [redacted] where he is from or in Michoacan where his spouse is from. The AAO has reviewed the State Department's current *Mexico Travel Warning*, dated February 8, 2012. Therein, U.S. citizens are specifically warned to defer non-essential travel to all three locations all of which have among the highest murder rates in Mexico. U.S. citizens are warned that crime and violence are serious problems throughout Mexico and can occur anywhere, U.S. citizens have fallen victim to drug-related and gang-related violence such as homicide, gun battles, kidnapping, carjacking and highway robbery, there is a rising number of kidnappings and disappearances throughout the country, and local police have been implicated in some of these incidents. The AAO has considered cumulatively all assertions of relocation-related hardship including the applicant's spouse adjusting to a country in which she has not resided for many years; separation from her children, grandchildren – one of whom resides with her, and other family members in the United States; the loss of steady employment with two employers in the United States and employment-related benefits; and stated safety concerns regarding Mexico. The AAO finds that, considered in the aggregate, the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to be with the applicant.

Although the applicant has demonstrated that his qualifying relative spouse would experience extreme hardship if she were to relocate to Mexico to join him, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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.

In proceedings for 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.