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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: OCT 2 4 2012 OFFICE: PANAMA CITY FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Panama City, Panama, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Venezuela, and a citizen of Venezuela and Italy. He 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 ten years of his departure from the country. The applicant is married to a U.S. citizen and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of his inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his wife.

In a decision dated March 3, 2011, the director found the applicant had failed to demonstrate that he was not inadmissible under section 212(a)(9)(B)(i)(II) of the Act, as counsel asserted, based on his presence in the United States as a nonimmigrant student. The director determined the applicant was inadmissible, in that he was admitted into the United States on September 8, 2002, as the child of an intra-company transferee with an L2 nonimmigrant visa valid through October 19, 2002, and he remained in the country until April 9, 2004. The director determined further that the applicant failed to establish his U.S. citizen wife would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

On appeal, counsel again asserts that evidence establishes the applicant changed his nonimmigrant status to that of an F1 student with duration of status validity in July 2000. Counsel indicates that although the applicant was last admitted into the United States with an L2 nonimmigrant visa in 2002, the applicant did not accrue unlawful presence for inadmissibility purposes because he continued to attend school, thereby simultaneously maintaining his F1 student classification. To support these assertions, counsel submits a Form I-539, Application to Extend/Change Nonimmigrant Status (Form I-539), dated July 3, 2000, reflecting an approved change in the applicant's nonimmigrant status to that of an F1 nonimmigrant, valid for duration of status. Alternatively, counsel asserts that the totality of the evidence establishes the applicant's wife will experience extreme hardship if the applicant is denied admission into the United States. Counsel indicates that additional evidence will be submitted to the AAO within 30 days of filing the appeal; however no additional evidence was received, and the record is considered complete.

Evidence submitted with the initial Form I-601 includes letters written by the applicant's wife, family and a friend, photos, and country-conditions information. 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:

> (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.
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> . . . .
>
> (iii) (I) Minors
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> No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

The record reflects that on July 28, 2000, the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services, "Service") approved a change in the applicant's nonimmigrant status from B2 nonimmigrant visitor to that of an F1 nonimmigrant student, valid for duration of status. The change of status permitted the applicant to remain in the United States as long as necessary to complete the approved course of studies. As noted on the Form I-797A approval notice, however, the approval notice "is not a visa nor may it be used in place of a visa." The Form I-797A also includes an advisory statement that applicants traveling outside of the United States "must obtain a new visa in the new classification before returning to the U.S."

The U.S. Department of State, Foreign Affairs Manual provides at Vol. 9, Section 41.112 N8.2, that automatic revalidation is available to aliens who have changed status in the United States. However, 8 C.F.R. § 214.1 provides in pertinent part, with regard to F1 visas:

> (b) Readmission of nonimmigrants under section 101(a)(15) (F) . . . to complete unexpired periods of previous admission or extension of stay—(1) Section 101(a)(15)(F).
>
> The inspecting immigration officer shall readmit for duration of status as defined in §214.2(f)(5)(iii), any nonimmigrant alien whose nonimmigrant visa is considered automatically revalidated . . . and who is applying for readmission under section 101(a)(15)(F) of the Act, if the alien:
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> (i) Is admissible;
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> (ii) Is applying for readmission after an absence from the United States not exceeding thirty days solely in contiguous territory or adjacent islands;
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> (iii) Is in possession of a valid passport unless exempt from the requirement for presentation of a passport; and

> (iv) Presents . . . an Arrival-Departure Record, Form I–94, issued to the alien in connection with the previous admission or stay, the alien's Form I–20 ID copy, and either:
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> > (A) A properly endorsed page 4 of Form I-20A-B if there has been no substantive change in the information on the student's most recent Form I-20A since the form was initially issued; or
> >
> > (B) A new Form I-20A-B if there has been any substantive change in the information on the student's most recent Form I-20A since the form was initially issued.

In the present matter, the record indicates the applicant departed the United States after his nonimmigrant status was changed to that of an F1 student in July 2000. There is no evidence showing that the applicant was readmitted into the United States under his original F1 student classification based on automatic revalidation. The record instead reflects the applicant traveled to Venezuela, where he applied for and was refused an F1 student visa in June 2001. His application for a B2 visitor visa also was refused by the U.S. Embassy in Venezuela in June 2001. The record indicates the applicant remained outside of the United States until he was issued an L2 nonimmigrant visa in April 2002. He was admitted into the country with his L2 visa in September 2002.

The AAO finds that the applicant's July 2000 nonimmigrant status change to that of an F1 student was conditioned upon his remaining in the United States, and that upon his departure from the country his nonimmigrant status classification became subject to U.S. admission and visa requirements. The applicant has not shown that his nonimmigrant visa was automatically revalidated. Moreover, he was not readmitted into the United States as an F1 student. Rather, he was admitted as an L2 nonimmigrant in September 2002, with an authorized admission until October 19, 2002. The applicant turned eighteen on December 11, 2002, and he departed the United States on April 9, 2004. He was therefore unlawfully present in the United States for over a year between December 11, 2002, when he turned 18 years old, and April 9, 2004.[1]

Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure from the United States, remains in force until the alien has been absent from the United States for

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[1] The record reflects the U.S. Embassy in Venezuela also refused the applicant's application for a B2 visa in June 2005. The applicant holds Venezuelan and Italian passports. He used his Italian passport to gain admission into the United States under the visa waiver program in 2004, 2006 and 2007. During his last attempt to enter the United States in June 2007, immigration officials determined the applicant was inadmissible for having been unlawfully present in the United States for over a year after the period authorized under his L2 visa.

ten years, in this case until April 4, 2014. Because the applicant has remained outside of the United States for less than ten years, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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

> Waiver.-The Attorney General [now Secretary, Department 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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez-Moralez,* 21 I&N Dec. 296 (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,* 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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 applicant's U.S. citizen wife is his qualifying relative under section 212(a)(9)(B)(v) of the Act.

The applicant's wife states that she was born and raised in the United States, and she and the applicant grew up together. She is a full-time college student and unable to move abroad to be with the applicant, and phone calls and travel are expensive. It is her dream to raise a family and live with the applicant in the United States. Their inability to spend time together on a daily basis depresses her.

Letters from the applicant's mother, mother-in-law and best friend attest to the applicant and his wife's love for one another, and happiness together. They also highlight the applicant's good character.

Country-conditions reports discuss declining economic conditions in Venezuela, the deterioration of democratic institutions in the country, and a decline in U.S.-Venezuelan political relations.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish that the applicant's wife would experience hardship beyond that normally

experienced upon removal or inadmissibility if the applicant is denied admission, and she continues to reside in the United States. It is noted that according to the applicant's immigrant-visa application, each spouse is self-supporting, and the applicant lives in Venezuela for part of the year and plays professional baseball in Italy for part of the year. The record lacks evidence of the applicant's wife's expenses and financial hardship and fails to demonstrate that she is unable to visit the applicant in Venezuela and Italy. The record also lacks evidence to corroborate assertions that the applicant's wife is suffering from depression due to separation from the applicant. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The cumulative evidence in the record also fails to establish that the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if she moved to Venezuela or Italy to be with the applicant. The record lacks evidence to corroborate assertions that the applicant's wife is a full-time student, that she would have to discontinue her studies if she relocated, and that she would experience financial or emotional hardship in either Venezuela or Italy. In addition, the country-conditions evidence contained in the record is general and fails to establish the applicant's wife would experience financial, emotional or other hardship beyond that normally experienced upon removal or inadmissibility in Venezuela or Italy.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. 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.