U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: AUG 1 2 2013 Office: ANAHEIM FILE:

IN RE:

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of the District Director, Mexico City, Mexico. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision is affirmed.

The applicant is a native and a citizen of Mexico who was found to be inadmissible to the United States pursuant to 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 admission within 10 years of his last departure. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver 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 U.S. citizen spouse and mother and lawful permanent resident father.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision,* dated February 16, 2011. The Mexico City District Director subsequently denied the applicant's motion to reopen, because the applicant's evidence was not sufficient. *See District Director's Decision*, dated July 19, 2011. The applicant, through his counsel, appeals the waiver denial and the director's denial of the motion to reopen.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the District Director that extreme hardship to a qualifying relative had not been established, as required by the Act. *Decision of the AAO*, dated December 20, 2012. Consequently, the appeal was dismissed.

On motion, the applicant presents additional evidence of emotional and financial hardship to the applicant's spouse and additional evidence of medical hardship to the applicant's mother. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. As the applicant has submitted new documentary evidence to support his claim, the motion to reopen will be granted.

The record contains the following documentation: briefs filed by the applicant's attorney; statements by the applicant and the applicant's spouse; medical documentation for the applicant's spouse; medical documentation for the applicant's mother; financial documentation; photographs; and letters of reference. The entire record was reviewed and considered in rendering a decision on the motion to reopen.

Section 212(a)(9) states in pertinent part:

> (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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions.-

(I) Minors.-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 the applicant entered the United States in 1986 without inspection and remained in the United States until June 2006, when he voluntarily departed. At the time of his entry into the United States, the applicant was five years old. He became 18 years old on February 23, 1999. Based on the applicant's history, the AAO finds that the applicant accrued unlawful presence from February 24, 1999, the day after his 18th birthday, until his departure in June 2006. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his 2006 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility.

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

other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S citizen wife, U.S. citizen mother, and lawful permanent resident father[1] are qualifying relatives 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, 631-32 (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, "[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

[1] On motion, counsel notes that the applicant's father is now a lawful permanent resident, and states that additional evidence would be submitted within 30 days to support a claim of hardship to the applicant's father if the waiver application is not approved. However, no additional evidence was received by the AAO, thus the record is considered complete.

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., In re 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 1292, 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.

Counsel contends that the applicant's spouse will suffer emotional hardship if the applicant's waiver application is not approved. In support of this contention, the record includes a psychological evaluation of the applicant's spouse dated July 13, 2010, indicating that the applicant's spouse was diagnosed with Major Depressive Disorder, recurrent, moderate, with Panic Attack Disorder with Agoraphobia. The evaluation recommended that the applicant's spouse seek individual and family therapy, behavioral modification, and to consider antidepressant medication if symptoms are not improved with therapy and behavioral modification. On motion, counsel submits a letter dated January 9, 2013 from a doctor at the Olive Medical Clinic, Inc., which states that the applicant's spouse was treated for six years for depression due to the absence of her husband. The letter provides no further detail concerning the severity of her condition or any treatment or assistance provided. Without further information, the AAO is not in a position to reach conclusions concerning the applicant's spouse's psychological condition. The evidence on the record is insufficient to conclude that the emotional problems that the applicant's spouse is experiencing are resulting in hardship beyond the common results of removal or inadmissibility.

Counsel further contends that the applicant's spouse will suffer financial hardship if the applicant's waiver application is not approved. The previous AAO decision noted that the applicant's spouse stated that she is a cosmetologist, but that her work has suffered because she takes extended time off to visit the applicant in Mexico and she cannot pay the bills without the applicant, but that the record contained no details regarding her income. *Decision of the AAO*, dated December 20, 2012. On motion, counsel submits a copy of a notice from the Internal Revenue Service indicated that the applicant has overdue taxes. However, the record still fails to provide any information regarding the income and living expenses of the applicant's spouse. The

evidence submitted is insufficient to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant's absence.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

On the issue of relocation for the applicant's spouse, the AAO, in its previous decision, determined that the applicant failed to demonstrate that his spouse would experience extreme hardship if she joined him in Mexico, noting that the record fails to provide documentary evidence to establish that the applicant's spouse is unable to obtain employment or receive adequate health care in Mexico. The AAO also determined that although country-conditions information regarding the high crime rate in Mexico was evidence of concern, it did not, in and of itself, establish extreme hardship, particularly given the applicant's demonstrated willingness to relocate within Mexico. The AAO concluded that considering the evidence in the aggregate, the record does not establish that the applicant's spouse would experience extreme hardship, should she relocate to Mexico to be with the applicant. *Decision of the AAO*, dated December 20, 2012. On motion, the applicant did not provide any additional information or evidence to support the claim that his spouse would suffer extreme hardship if she were to relocate to Mexico.

In regard to the applicant's mother, the applicant's mother contends that she will suffer financially, emotionally, and psychologically if the applicant's waiver application is not approved. However, the record contains no documentation to support these contentions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Counsel contends that the applicant's mother is suffering from medical hardships. The record includes evidence that the applicant's mother has chronic vertigo, and that she requires assistance with her daily activities. On motion, counsel submits a letter dated January 9, 2013 from a doctor at the Olive Medical Clinic, Inc., which states that the applicant's mother has been treated at the clinic for over 15 years with a diagnosis of severe vertigo unretracted, or Meiere's disease, and that patients with this disease need the care of their family. The AAO notes that the applicant's father and brother reside in the United States. There is no evidence in the record that the applicant's father and brother are unable to provide the required care for his mother. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

On the issue of relocation for the applicant's mother, the AAO notes that the mother has resided in the United States since 1986, and is now a U.S. citizen. The applicant's mother is suffering from a medical condition, and has been treated for this condition in the United States. The applicant's mother has her lawful permanent resident spouse and a U.S. citizen son residing in the United States. Based on the evidence on the record, the applicant has established that his mother would suffer hardship beyond the common results of removal if she were to relocate to Mexico to reside with the applicant

The AAO finds 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 to his mother from separation, the AAO cannot find that refusal of admission would result in extreme hardship to this qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying spouse as required under section 212(i) of the Act. 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reopen is granted and the prior AAO decision is affirmed.