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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: JAN 0 2 2013 OFFICE: MONTERREY, MEXICO [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B) and and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A).

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application and permission to reapply for admission into the United States after deportation or removal were denied by the Field Office Director, Monterrey, Mexico, and are 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 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 readmission within 10 years of his last departure from the United States. The applicant is also inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) as he was ordered removed in 1998 and departed the United States in December 2005. The applicant seeks a waiver of inadmissibility as well as permission to reapply for admission into the United States after removal in order to reside in the United States with his U.S. Citizen spouse and children.

The Field Office Director concluded the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative, and that he did not merit a favorable exercise of discretion. *See Decision of Field Office Director* dated October 13, 2011. The applications were denied accordingly. *Id.*

On appeal, counsel for the applicant submits a brief in support. Therein, counsel contends the spouse suffers from economic, psychological, and family-related difficulties without the applicant present. Counsel additionally asserts the spouse has many family ties in the United States, she will not have access to medical and psychological help in Mexico, and the educational system there is not sufficient for the two children.

The record includes, but is not limited to, statements from the applicant and his spouse, letters from family, friends, and employers, psychological evaluations, educational and financial records, documentation of removal proceedings, evidence of birth, marriage, residence, and citizenship, and articles on psychological issues as well as country conditions. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act states in pertinent part:

> (A) Certain aliens previously removed.-
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> > (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(b)(6)

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The record reflects that the applicant was issued a Notice to Appear in 1997. An immigration judge granted him voluntary departure on May 1, 1998, allowing him until August 31, 1998 to leave the United States. The applicant remained in the country after August 31, 1998. The applicant's subsequent motion to reopen was denied on October 9, 1998. He remained in the United States until December 2005, when he returned to Mexico. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act until December 2015 and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

Section 212(a)(9) of the Act provides, 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.
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> . . . .
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> (v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant admitted under oath that he entered the United States without inspection in March 1995 and returned to Mexico in December 2005.[1] Inadmissibility is not contested on appeal. The AAO therefore finds that the applicant has accrued more than one year of unlawful presence in the United States and is inadmissible for 10 years after his last departure pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

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

[1] The record also reflects that the applicant entered the United States without inspection in 1992 and departed in 1993.

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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 spouse contends she experiences financial, emotional, and family-related hardship without the applicant present. She explains that when the applicant was in the United States, they were able to meet their financial obligations, which includes a mortgage, but without him, she struggles to pay her bills on time, has received unemployment benefits, and she has had to work longer hours. Household bills, U.S. Federal income tax returns for 2009, and letters from the applicant's employers are submitted as evidence of income and expenses. The spouse additionally claims she has suffered from emotional and psychological issues without the applicant, stating she and her children need and miss the applicant. Psychological evaluations are present in the record. In the latest evaluation, a clinical psychologist opines that the spouse has depression and anxiety, which amounts to extreme hardship. Articles on anxiety and depression are also submitted. The spouse contends her two children, now 17 and 10 years of age, experience emotional difficulties without a father figure in their lives, and have had to do without some educational opportunities

because no one was available to provide transportation. The spouse discusses the financial and emotional impact of the applicant's continuing immigration processes, as well as her reliance on the applicant for chores such as fixing things in the house. Letters from family and friends describe the family's relationship and indicate the applicant has good moral character. The spouse indicates her house was burglarized once, and she particularly missed the applicant after that incident.

The spouse moreover asserts she would not be able to live in Mexico because she has numerous family ties in the United States, and that it is too dangerous there for her and her children. She adds that although her children are fluent in Spanish and English, they would not be able to adjust to education in Mexico because they are unfamiliar with Mexican history. Counsel contends that the spouse would be unable to find employment in Mexico, and that she needs medical help. Articles on country conditions are present in the record, as is a letter from the applicant's employer in Mexico.

The record contains articles from Wikipedia on major depressive disorder, fear of crime, and country conditions in Mexico and the United States. Online content from Wikipedia is subject to the following general disclaimer:

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See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on December 13, 2012. The AAO can only give limited weight to the Wikipedia articles submitted because the validity of the information therein was not be verified or reviewed by qualified parties.

The applicant has shown his spouse experiences financial difficulties without him present. Although the record does not contain evidence to indicate the spouse works six days per week, documentation of record demonstrates that her household expenses exceed her income, and that she has had difficulties paying her bills, including her mortgage, on time. The record also contains evidence demonstrating that after the applicant returned to Mexico, the spouse received unemployment benefits. Furthermore, the record indicates that the applicant was employed in the United States and was consequently able to contribute financially.

The spouse claims she had difficulties as a result of a burglary. The AAO notes that the record contains no corroborating documentation, such as a police report, that such an incident occurred.

Regardless, the record contains sufficient evidence to demonstrate that the applicant's spouse experiences emotional and psychological difficulties, such as major depressive disorder, post-traumatic stress disorder, and anxiety. Furthermore, the AAO notes that the applicant's spouse takes care of her two children in the United States without the applicant present.

The AAO therefore finds there is sufficient evidence of record to demonstrate that the spouse's hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, psychological, family-related, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes she would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without his spouse., the record contains insufficient evidence of extreme hardship upon relocation to Mexico. Although counsel and the spouse claim they would face danger in Mexico, the AAO notes that there is no travel advisory in effect for Guanajuato, Mexico, where the applicant currently resides. *See Travel Warning: Mexico, U.S. Department of State,* November 20, 2012. Moreover, the record does not contain evidence to support counsel's contentions that the spouse would be unable to access necessary medical care in Guanajuato, and she would be unable to find employment there. The spouse's contention that the children may have to start at a 1st grade level given their lack of knowledge on Mexican history is similarly unsupported by the record. The AAO moreover notes that the spouse knows Spanish and was born in Guanajuato, Mexico, where the applicant resides.

The AAO notes that relocation to Mexico would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 U.S. Citizen spouse as required under section 212(a)(9)(B)(v) 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.

The AAO notes that the Field Office Director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act no purpose would be served in granting the applicant's Form I-212.

In proceedings for a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act as well as for permission to reapply for admission after deportation under section 212(a)(9)(A)(iii) 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.