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

(b)(6)

[redacted]

Date: JAN 30 2013 Office: MEXICO CITY [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:

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 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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director, Mexico 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 Mexico 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 his wife and children in the United States.

The acting field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, the applicant's wife, contends that since her husband's departure from the United States, they have lost everything. She contends she is now living in Mexico with her husband while their children are living with their aunt in the United States.

The record contains, *inter alia*: letters from the applicant; letters from the applicant's wife, Ms. a letter from a counselor; letters from the applicant's former employers; letters from the couple's children; 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 the applicant does not contest, that he entered the United States without inspection in 1997 and remained until his departure in May 2010. The applicant accrued unlawful presence of approximately thirteen years. He now seeks admission within ten years of his 2010 departure. Accordingly, he 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 his 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 wife, [redacted], states that since her husband departed the United States two years ago, she has had a very hard time. She states she and the couple's two children have lived in the United States their entire lives, and that her parents, siblings, and friends all live in North Carolina. She states that after her husband's departure, she was unable to find a job and that they lost everything, so she and the couple's two children moved to Mexico to be with the applicant. According to [redacted], the kids could not go to school in Mexico because they do not read or write in Spanish, and it costs money to go to school in Mexico. In addition, [redacted] contends she had a miscarriage when she was in Mexico. She states that after she recovered from the miscarriage, she really wanted to go back to the United States, so she and the children went to live with her father in Charlotte, North Carolina. She states the children are back in school, that she again looked for a job, and that she had to ask for food stamps for the first time in her life. [redacted] contends that because she was still unable to find a job, she left to go back to Mexico, but left her children with their aunt so they could keep attending school. She states that she is living in Mexico now with her husband and that their children are in the United States. She contends she does not read or write Spanish and does not understand the customs of Mexico.

After a careful review of the record, there is insufficient evidence to show that the applicant's wife, Ms. [redacted] has suffered or will suffer extreme hardship if her husband's waiver application were denied. If Ms. [redacted] decides to return to the United States without her husband, 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. Although the AAO is sympathetic to the family's circumstances, there is insufficient evidence in the record to 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). Regarding [redacted] claims that she could not find a job and applied for food stamps, there are insufficient documents in the record to support these claims. [redacted]

does not provide any specifics regarding her purported job searches and she does not provide any documentation corroborating her contention that she applied for food stamps. There is also no letter in the record from father corroborating her contention that she and the children lived with him for a short time and there is no letter from the children's aunt substantiating the claim that the children currently live with her. Similarly, although the applicant contends his father was giving Ms. financial assistance, there is no letter from the applicant's father in the record to corroborate this contention. Although the record contains documentation from the applicant's former employer indicating that the applicant earned $800 per month for landscaping services, there is nonetheless insufficient documentation in the record addressing financial hardship. According to the applicant, he was self-employed "on the side" and worked part-time performing handyman services. There is no evidence in the record, such as copies of tax returns, addressing the applicant's total wages or income when he was in the United States and there is no documentation addressing the family's regular, monthly expenses. Moreover, to the extent the applicant contends suffers from a nervous disorder for which she requires Methadone, aside from a letter from a substance abuse counselor confirming that is taking Methadone, there is no letter from any health care professional diagnosing her with any nervous disorder or other mental or physical condition. To the extent the applicant contends the children do not listen to and that the older daughter has started acting out violently against her, there are no documents to support this contention. For example, there are no letters from any teachers, family members, or counselors addressing any difficulties the couple's children may be experiencing. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship will experience if she returns to the United States without her husband amounts to extreme hardship.

Furthermore, the record does not show that Ms. Vallejo has suffered or will suffer extreme hardship if she remains in Mexico with her husband. Although the AAO acknowledges contentions that their children are living in the United States, that she does not read or write Spanish, and that she is unfamiliar with Mexican customs, the record does not show that relocation to Mexico has been any more difficult than would normally be expected under the circumstances. Considering all of the evidence cumulatively, the record does not show that Ms. hardship has been extreme, or that her 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 wife 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.