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]

JUN 0 4 2013

Date: Office: PANAMA CITY FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the 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. 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 was denied by the Field Office Director, Panama City, Panama. 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 Colombia 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, section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit, and section 212(a)(9)(A) of the Act as an alien who has been previously removed. The applicant is married to a U.S. citizen and is the son of a lawful permanent resident. The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act in order to reside with his wife, his mother, and his child in the United States.

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

On appeal, counsel contends, among other things, that the applicant established the requisite hardship, particularly considering the applicant's wife's psychological problems, the fact that she lives with her mother and brother, both of whom have medical problems, and that the couple has a U.S. citizen daughter.

The record contains, *inter alia*: a declaration from the applicant; a statement from the applicant's wife, Ms. a letter from a social worker; a letter from a psychiatrist; a copy of a prescription; a letter from Ms. physician; a letter from Ms. s mother's physician; medical records for Ms. brother; a letter of support; a Social Security statement; 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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> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.
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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.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien. . . .

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

> (A) *Certain aliens previously removed.*
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> (i) *Arriving aliens.* Any alien who has been ordered removed under section [235(b)(1) of the Act] . . . and who again seeks admission within 5 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.
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> (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 Attorney General has consented to the alien's reapplying for admission.

In this case, the record shows that the applicant entered the United States in 2005 without inspection. The record further shows that in February 2010, the applicant was apprehended by Mexican immigration officers when he tried to enter Mexico from the United States without a Mexican visa. The applicant was turned over to U.S. immigration officials and the record shows the applicant told U.S. immigration officials that he was living illegally in New York for three or four months, had never been in the United States before, and was enroute to Colombia. However, the applicant stated during his immigrant visa interview that he had lived in the United States since 2005 and departed in 2009. The record shows the applicant remained in the United States until his removal in March 2010.

Counsel does not contest the applicant's inadmissibility on appeal. The applicant concedes that he lied to U.S. immigration officials when he claimed to have lived in the United States for only three or four months and a copy of the appliant's visa application in the record shows he claimed to have lived in the United States from June 2009 until February 2010. However, according to the applicant's waiver application and Biographic Information form (Form G-325A), the applicant now concedes that he was actually living in the United States unlawfully for four years, from 2006 until 2010. Therefore, the applicant is inadmissible 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 section 212(a)(6)(C)(i) of the Act for willfully misrepresenting the length of time he was unlawfully present in the United States, a material fact, in order to procure an immigration benefit.[1] In addition, the applicant is inadmissible under section 212(a)(9)(A) of the Act as an alien who has been previously removed.

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[1] The applicant contends that he merely made a mistake when he said during his visa interview that he departed the United States in 2009 instead of 2010. This misstatement is irrelevant as the applicant remains inadmissible for willfully misrepresenting on his visa application that he was only unlawfully present in the United States for less than one year when he was, in fact, unlawfully present for more than one year.

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, Ms. , states that she has lived in the United States since 1997. She states the couple has a child together and that she is going on another year of being a single parent. Ms. contends she has been suffering from depression, anxiety, and asthma, and that she has been prescribed an antidepressant. She also states she has worked at the for over three years and that it is a good job with union membership and health insurance. She contends she fell at work in January 2012 and sprained her ankle so badly that she could not return to work until June. In addition, Ms. contends she lives with her mother, who is disabled and receiving disability benefits, as well as her brother, who suffers from seizures. According to Ms. her mother cannot work at all and receives only $544/month. Ms. claims she cannot relocate to Colombia because her mother and brother need her. She also states she has never worked in Colombia, has lived in the United States since she was twenty years old, has a good job, and does not feel she would have the same access to health care in Colombia that she has in the United States.[2]

After a careful review of the record, the AAO finds that if Ms. returned to Colombia, where she was born, to avoid the hardship of separation from her husband, she would experience extreme hardship. The record contains documentation showing that Ms. lives with her mother and that their rent is $1,136 per month. A letter from the mother's physician states she has been totally disabled since May 2010 and a letter from the Social Security Administration confirms she receives disability benefits of $544 per month. In addition, the record shows that Ms. teenage brother has asthma as well as a history of seizures that is most likely epilepsy, for which he takes medication. The AAO recognizes Ms. reluctance to relocate to Colombia, which would entail leaving her mother and brother, both of whom have significant medical problems, and with whom she lives and helps financially support. In addition, the AAO acknowledges that Ms has lived in the United States her entire adult life and that relocating to Colombia would entail leaving her job and all of the benefits that come with it. Moreover, the AAO takes administrative notice that the U.S. Department of State has issued a Travel Warning for Colombia, warning of the dangers of travel to Colombia. *U.S. Department of State, Travel Warning, Colombia*, dated April 11, 2013. Considering all of these factors cumulatively, the AAO finds that the hardship Ms. Solarte would experience if she returned to Colombia to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

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[2] The AAO notes that even though the record shows that the applicant's mother is a lawful permanent resident, there is no claim that the applicant's mother, who is also a qualifying relative under the Act, would suffer extreme hardship if the applicant's waiver application were denied.

Nonetheless, Ms. has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the family's circumstances, and recognizes the challenges of being a single parent, the record does not 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 Ms. contention that she has depression and anxiety, the record contains documentation that she has been diagnosed with Major Depression, that she is depressed "due to loneliness and not [being] able to see her husband," and that she has been prescribed an anti-depressant. Nonetheless, the record does not show that Ms. situation, or the symptoms she is experiencing, are unique or atypical compared to others separated from a spouse. Regarding Ms. contention that she has asthma and that she sprained her ankle in January 2012, the record does not show she requires her husband's assistance in any way. There is no documentation in the record corroborating her claim she has asthma and the most recent evaluation for her sprained ankle, dated July 24, 2012, concludes that she "does not require any household help, special transportation or durable medical equipment," and that she is "able to work and perform all normal daily activities of living without any limitations." Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship Ms. has experienced or will experience amounts to extreme hardship.

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 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 in 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 applicant's wife in this case.

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.