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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 28 2013 Office: ANAHEIM, CA File:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v), and section 212(d)(11) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(d)(11).

ON BEHALF OF APPLICANT:

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 was denied by the International Affairs Support Branch of behalf of the Field Office Director, Ciudad Juarez, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. She 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 one year or more and seeking admission within 10 years of her last departure. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for knowingly aiding her son in entering the United States in violation of law. She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 22, 2012.

On appeal, counsel for the applicant asserts the Field Office Director failed to properly weigh the evidence in the record and failed to consider the evidence of hardship in the aggregate, further asserting that the applicant's spouse will experience extreme hardhsip due to the applicant's inadmissibility. *Form I-290B*, received on September 24, 2012.

The record includes, but is not limited to: counsel's brief; a psychological examination of the applicant's spouse by , dated June 27, 2012; a statement from the applicant's spouse's; a tax return for the applicant's spouse; and evidence of family ties. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(E) of the Act states, in relevant part:

> (i) In general. Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.
>
> (ii) Special rule in the case of family reunification. Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged,

> induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.
>
> (iii) Waiver authorized. For provision authorizing waiver of clause (i), see subsection (d)(11) of this section.

The record indicates that the applicant entered the United States without inspection, bringing her infant son with her, on December 20, 2011, and remained until she departed the United States in 2011. As the applicant smuggled her infant son into the United States on December 2000, she is inadmissible under section 212(a)(6)(E) of the Act.

Section 212(d)(11) of the Act states, in relevant part:

> (11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) of this section in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 1181(b) of this title and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

Counsel asserts on appeal that the applicant should not be considered inadmissible under section 212(a)(6)(E) of the Act for bringing her son into the United States because she could not leave him behind and because a family member helped arrange her entry into the United States. Counsel's assertions have no legal merit, and the AAO notes that the applicant herself admitted that she brought her son into the United States when she crossed the border without inspection.

As the record indicates the person smuggled into the United States by the applicant was her son, she is eligible consideration for a waiver under section 212(d)(11) of the Act. However, as the applicant failed to demonstrate eligibility for a waiver of her inadmissibility under section 212(a)(9)(A)(i)(II) of the Act, the Field Office Director declined to exercise favorable discretion under section 212(d)(11) of the Act and waive the applicant's inadmissibility under section 212(a)(6)(E) of the Act.

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-
>
> . . . .
>
> (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.
>
> . . . .

The record indicates that the applicant entered the United States without inspection in 2000, and remained until she departed in 2011. Therefore, the applicant was unlawfully present in the United States for over a year from 2000 until 2011, and is now seeking admission within 10 years of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative 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, 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.

The applicant's spouse asserts he will experience extreme financial, emotional and physical hardship due to separation from the applicant. *Statement of the Applicant's Spouse*, dated February 24, 2012.

He asserts that he does not have the money to support two households, he might lose the house that he and the applicant purchased in 2009 and he would have to consider sending his son to Mexico to reside. Counsel for the applicant asserts that the applicant's spouse will experience extreme emotional hardship and refers to a psychological examination of the applicant's spouse. *Brief in Support of Appeal*, dated October 12, 2012.

Although the applicant's spouse asserts he is experiencing financial hardship, the record does not support this. A tax return for 2010 indicates the applicant's spouse's adjusted gross income was $66,753. While there is evidence the applicant's spouse purchased a home in 2009, there is no evidence that he has been late on payments, is unable to afford the mortgage payment on this property, or that he is unable to meet any of his financial obligations. There is no evidence that the applicant's spouse would be unable to afford child care in light of his wages. The record does not indicate the applicant's spouse will experience a significant financial impact due to separation from the applicant.

The record contains a psychological examination of the applicant's spouse by diagnosing him with Major Depressive Disorder and Anxiety. While the testimony of an expert witness is valued, the AAO notes that in this case the examination of the applicant's spouse is the result of one meeting between the psychologist and himself. The report is not referenced, supported or corroborated by other evidence in the record generally, such as in a letter by the applicant's spouse himself. As such, the weight of the report as evidence suffers from a lack context and probative value. Nonetheless, the AAO will give some consideration to the fact that the applicant's spouse will experience an emotional impact due to separation from the applicant.

The applicant's spouse has asserted that he will not be able to bear the physical burden of raising his son without the applicant's assistance. However, the record fails to distinguish the physical hardship on the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens. 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)).

Even when the hardship factors due to separation are considered in the aggregate, the AAO does not find them to rise above the common impacts to a degree of extreme hardship.

With regard to hardship upon relocation, the applicants' spouse notes that he has resided in the United States for 15 years and has close family ties and stable employment in the United States. *Statement of the Applicant's Spouse*, February 24, 2012.

The AAO recognizes the applicant's spouse has family ties to the United States, and has obtained valuable employment that sustains himself and his family with revenue and health insurance. *See Letter of Employment, HR Coordinator*, , dated December 7, 2011. The AAO also recognizes that the applicant's spouse is currently supporting their son in the United States, representing an additional responsibility and heightened financial impact upon relocation.

The applicant's spouse has also noted that he is a Lawful Permanent Resident, and that relocation to Mexico would sever the benefits he worked hard to obtain. The AAO will give due consideration to the possibility that the applicant's spouse's lawful permanent resident status could be impacted by extended residence in Mexico.

When all elements of hardship due to relocation are considered in aggregate, the AAO finds the impacts constitute extreme hardship.

Although the applicant has established that a qualifying relative would experience extreme hardship upon relocation, the record does not establish that a qualifying relative will experience extreme hardship due to separation.

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 separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

As the applicant failed to demonstrate qualification for a waiver of her unlawful presence, the Field Office Director declined to waive the applicant's inadmissibility under section 212(a)(6)(E) of the Act. As the AAO has determined that the applicant failed to establish that a qualifying relative will experience extreme hardship it finds no purpose would be served in exercising favorable discretion to approve a waiver under section 212(d)(11) of the Act. The AAO notes, however, that the applicant remains eligible to receive a waiver under section 212(d)(11) in the event the applicant overcomes her unlawful presence inadmissibility.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.