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: MAY 16 2013 Office: ANAHEIM, CA FILE:

IN RE: Applicant:

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:

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 International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez. 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 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 in the United States.

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

On appeal, counsel contends the director failed to properly weigh all the evidence in the case and that the decision contains no analysis whatsoever. Counsel contends the applicant met his burden of proving extreme hardship, particularly considering financial hardship and the applicant's wife's parents' medical issues.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on June 30, 2010; letters from a letter from physician and other medical documents; copies of pay stubs; a letter from former employer; letters from parents' physicians; articles addressing country conditions in Mexico; letters of support; photographs of the applicant and his family; 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 2004 and remained until June 2011. The applicant accrued unlawful presence of seven years. He now seeks admission within ten years of his 2011 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 within ten years of his 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, , states that she has lived in the United States since 2003 when she was twelve years old. She contends her entire family lives in the United States. In addition, states she has ovarian cysts and that she is trying to get pregnant. According to she needs to receive regular gynecological care. Furthermore, contends she is the only person who is working right now and has worked for the same employer since 2009. She states she lives with her parents and her four siblings, and that she helps pay expenses, including rent and utilities. Moreover, contends her parents have serious health problems. She states her mother has rheumatoid arthritis and her father has diabetes, hyperlipidemia, and asthma. She contends that she and her husband help her parents with their health care, taking them to appointments and translating medical information. She states her mother does not work and her father works seasonally. Moreover, states that she cannot relocate to Mexico to be with her husband. According to , she tried living in Mexico with her husband in his mother's house in Zacatecas for five months. She states that she felt trapped inside the house because it is unsafe to be outside. She contends that one day, she saw two police officers and 4 civilians dead. In addition, she states her cell phone did not work well in Mexico and that she got anxiety attacks because she was unable to call her family in the United States. She states the anxiety and depression she felt in Mexico was overwhelming. She also contends she got sick in Mexico, that the medication was very expensive, and that she was scared during the entire 40-minute drive to see a doctor. She also states that she and her husband could not find work in Mexico.

After a careful review of the record, the AAO finds that if relocated to Mexico to avoid the hardship of separation, she would experience extreme hardship. The record shows that has lived in the United States for the past ten years, her entire adult life. The AAO acknowledges her contention that her entire family resides in the United States, that she lives with them, and that relocating to Mexico would separate from her family. In addition, the record contains letters from physicians corroborating claims regarding her parents' chronic health problems. Furthermore, the AAO recognizes that tried living in Mexico with her husband, but that she ultimately returned to the United States. A letter from a physician in

Mexico confirms that she was depressed while living in Mexico and a letter from a delegate in Zacatecas states that medical care is available in the community only twice per month. Moreover, the AAO takes administrative notice of the U.S. Department of State's Travel Warning for Mexico, urging U.S. citizens to defer non-essential travel to the state of Zacatecas, where the applicant was born and is currently living. *U.S. Department of State, Travel Warning, Mexico*, dated November 20, 2012. Considering these unique circumstances cumulatively, the AAO finds that the hardship would experience if she relocated to Mexico to be with her husband is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, has the option of remaining in the United States and the record does not show that she will experience extreme hardship if she remains in the United States without her husband. Although the AAO is sympathetic to the couple's circumstances, 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 ovarian cysts and attempts to get pregnant, although the record contains copies of medical records and a translation from a doctor's visit in Mexico, nonetheless, there is insufficient evidence in the record to evaluate the extent of her condition. There is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of ovarian cysts and, according to herself, her ovarian cysts "are normal in size[,] normal to be there . . . [and] should not interfere with [her] getting pregnant." Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. Regarding emotional hardship, the record shows has significant family support and the record does not show that her hardship of being separated from her husband are unique or atypical compared to others in similar circumstances. Regarding financial hardship, there is insufficient documentation in the record to evaluate the extent of hardship. Although the record shows she was earning $8.25 per hour as a cashier and lost her job when she went to Mexico, as claims, she lives with her family. The record does not contain any evidence addressing her family's total income or wages, there is no evidence addressing the applicant's earnings when he resided in the United States, and aside from a copy of father's mortgage statement, there is no evidence addressing regular, monthly expenses.[1] In any event, the AAO notes that the only qualifying relative in this case is and the record does not show that any financial hardship parents may experience would cause her extreme hardship. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship will experience if she remains in the United States amounts to hardship that is extreme, unique, or atypical.

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[1] The record contains a letter from father that is written in Spanish and is untranslated. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Therefore, the letter from father cannot be considered.

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 qualifying relative 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.