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)

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:

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. 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 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 lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with her husband and children 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, the applicant submits new evidence of hardship, including documentation addressing her husband's health, financial hardship, and country conditions in Mexico.

The record contains, *inter alia*: letters from the applicant; letters from the applicant's husband, Mr. a letter addressing Mr. s psychological state; a letter from the applicant's physician; a letter from a psychologist; numerous letters of support; articles addressing conditions in Mexico; 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 she unlawfully entered the United States in June 2004 and remained until February 2012. The applicant accrued unlawful presence of over seven years. She now seeks admission within ten years of her 2012 departure. Accordingly, she 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 her 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 husband, Mr. states that if he remains in the United States, he will be paying for bills in both the United States and Mexico, and, therefore, would be unable to save any money for his family. He also contends that he fears he would get sick from worrying about his wife's health and security in Mexico. In addition, Mr. contends he cannot return to Mexico because he would have to leave his job and would not earn enough money to support his family in Mexico. He contends his children have a right to an education in the United States and medical services are not good in Mexico. Furthermore, Mr. states that crime is high in Mexico.

After a careful review of the record, there is insufficient evidence to show that the applicant's husband, Mr. has suffered or will suffer extreme hardship if his wife's waiver application were denied. If Mr. decides to remain in the United States without his wife, 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 emotional hardship, the record contains a letter from a psychologist in Mexico stating that Mr. is experiencing trouble sleeping, is irritable, and is melancholy, diagnosing him with anxiety and early depression. Nonetheless, the record does not show that his depression and anxiety, or the symptoms he is experiencing, are unique or atypical compared to others separated from a spouse. To the extent the record contains a letter diagnosing the applicant with depressive disorder as well as numerous, identical letters stating that the applicant is very sad and depressed, the only qualifying relative in this case is Mr. The record does not show that any hardship the applicant is experiencing is causing Mr. hardship that is extreme, atypical, or unique. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship Mr. will experience if he remains in the United States without his wife amounts to extreme hardship.

Furthermore, the record does not show that Mr. has suffered or will suffer extreme hardship if he returns to Mexico, where he was born, to be with his wife. Although the AAO acknowledges that the couple has children, and that the education and health care systems in Mexico may not be comparable to the United States, the record shows that the couple's children are currently nineteen and twenty-eight years old and were born in Mexico. There is no suggestion that any family member has any medical condition that cannot be adequately monitored or treated in Mexico and the AAO notes that Mr. has already sought psychological services in Mexico. Regarding financial hardship, and Mr. s contention that he might lose his mobile home if he relocated to Mexico, there is insufficient documentation in the record to evaluate the extent of Mr. s hardship. Although the record contains a receipt for his mobile home as well as receipts showing Mr. sends money to his wife in Mexico, there record does not contain documentation addressing Mr. Chavez's income or wages, such as copies of a pay stubs or tax returns. Furthermore, although the AAO recognizes that the U.S. Department of State has issued a Travel Warning for parts of Mexico, including where the applicant was born and is currently living, *U.S. Department of State, Travel Warning, Mexico,* dated November 20, 2012, the Travel Warning alone is insufficient to show extreme hardship. In sum, the record does not show that Mr. 's return to Mexico would be any more difficult than would normally be expected under the circumstances. Considering all of the evidence cumulatively, the record does not show that Mr. s hardship has been, or will be extreme, or that his 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 husband 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 she 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.