U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: SEP 18 2013 OFFICE: ANAHEIM 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, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch, Anaheim, California on behalf of the Field Office Director, Ciudad Juarez, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 country for more than one year and seeking readmission within ten years of his departure from the United States. He 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), in order to live in the United States with his lawful permanent resident spouse.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* dated April 3, 2013.

Counsel asserts on appeal that the director neither gave proper weight to the evidence nor considered the evidence in the aggregate. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed on May 6, 2013, *and counsel's brief.*

The record contains, but is not limited to: Form I-290B and counsel's brief; various immigration forms; statements by the applicant, applicant's spouse, step-children, family, friends and employers; medical documents and prescriptions; bank statements; identity documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides in pertinent part:

> (i) [A]ny alien (other than an alien lawfully admitted for permanent residence) who-
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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.

The record reflects that the applicant entered the United States without inspection in 2001 and returned to Mexico in July 2012. He is thus inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. §1182(a)(9)(B)(i)(II) for having been unlawfully present in the United States from 2001 to July 2012, and counsel does not contest the inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides in pertinent part:

> Waiver.-The [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 [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)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the United States citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's wife is the only qualifying relative. 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 U.S. 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 record contains references to hardship the applicant's step-children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children or step-children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's step-children will not be separately considered, except as it may affect the applicant's spouse.

The applicant's wife is a 47 year-old native and citizen of Mexico and lawful permanent resident of the United States since 1990. She states that she stayed with the applicant in Mexico for his consular interviews until September 11, 2012, when she felt sick and returned to the United States to see a doctor who diagnosed her with gallstones. The applicant's spouse explains that without insurance and the applicant's financial contribution, she cannot afford to have the surgery she requires. Counsel and the applicant's spouse assert that her income from her two jobs only covers her household expenses, and the loss of the applicant's earnings in the United States has caused them to use their savings. Account statements and a letter from their bank show that their savings account has been depleted, with their balance changing from $7,144 in July 2012 to $12.35 in December 2012. A letter from the applicant's former employer dated July 29, 2012 indicates that he was a hardworking employee with their tree-trimming business. However, the applicant's biographical information form signed and dated July 9, 2012, states that the applicant worked as a

tree trimmer from July 2002 until October 2010 and was unemployed after October 2010. Letters from family members indicate that while the applicant lived in the United States, he also financially supported the applicant's spouse's ex-husband for a few months in 2011 and 2012 before his death, paid for several meals and school supplies for extended family members, and offered to help pay for the college tuition of his step-son and step-daughter. Although the AAO acknowledges the applicant's financial assistance and generosity to his spouse and many members of their family, the record lacks evidence of the applicant's specific financial contribution and earnings to corroborate these assertions. 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)).

The applicant's spouse states she has medical and mental health issues that include gallstones, a peanut allergy and depression. In the past she also suffered from migraine headaches and foot pain. Medical documents indicate that her mental and physical conditions are being treated or monitored. Prescriptions from April 2013 submitted on appeal show treatment for anxiety, muscle spasms, anemia, wheezing and a peanut allergy. The applicant's spouse's statements and those of family and friends show that she is prone to depression, which began after the kidnapping of her nephew in Mexico in 2009. Medical records corroborate these assertions and show that she received medication for depression and anxiety in September 2010. The applicant's spouse and her two employers state that after the applicant's departure, she has become less focused and productive at her work. She explains that she is also dealing with negative behavioral changes in her youngest son since the applicant returned to Mexico. However, medical documents from December 2012 indicate that she answered negatively to several questions about her depressed mental state.

The AAO has considered in the aggregate all evidence of separation-related hardship to the applicant's spouse, including their length of marriage, the emotional strain of being separated from the applicant, her physical health, and loss of financial support. Although the AAO recognizes a strong familial bond exists among the applicant, his spouse and their family members and that his separation results in emotional and financial challenges to his spouse, the record is insufficient to demonstrate that the applicant's spouse suffers extreme hardship without the applicant that is distinguished from those hardships ordinarily associated with a loved one's removal.

The applicant's spouse states that she cannot live in Mexico due to inadequate health care and her separation from her family in the United States. She explains that she stayed with the applicant in Mexico and was happy to be with him but returned to the United States due to her sickness. The applicant's spouse worries that medical professionals in Mexico would not know how to treat her ailments, especially her peanut allergy. The record does not contain evidence corroborating the applicant's spouse's claims of the inadequacy of the medical system in Mexico. Moreover, she and other family members explain that their family is very close-knit, they rely on each other for support, and the applicant's spouse would lose her close connection with her children, grandchildren and extended family if she relocated to Mexico. The applicant's spouse also mentions the violence in Mexico and refers to the kidnapping and disappearance of her nephew.

While the U.S. Department of State's Travel Warning for Mexico dated July 12, 2013 corroborates her safety-related reservations about Mexico generally, the applicant's region, Campeche, was not issued an advisory warning.

The AAO considers cumulatively all assertions of relocation-related hardship to the applicant's spouse, including her length of residence in the United States, her ability to maintain her permanent resident status, her loss of family ties and employment, and health and safety concerns in Mexico. Although the AAO acknowledges the various difficulties in the event the applicant's spouse chooses to relocate to Mexico, the evidence in the record is not sufficient to establish that the applicant's spouse would suffer hardship in the aggregate that would meet the extreme-hardship standard.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.