(b)(6)

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

U.S. Citizenship and Immigration Services

DATE: MAY 05 2014 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE:

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 Director, Nebraska Service Center denied the waiver application. A subsequent appeal was denied by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted and the prior decision of the AAO will be affirmed.

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States pursuant to 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 for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident mother.

The Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Director*, dated May 10, 2013. On appeal, the AAO determined that the applicant had failed to establish the existence of extreme hardship to a qualifying relative upon separation and denied the appeal accordingly. *See Decision of the AAO*, dated December 23, 2013.

On motion, counsel for the applicant asserts that the applicant's mother is suffering emotional hardship upon separation from the applicant, which is impacting her physical condition. Counsel further asserts that the applicant's mother has had to downgrade her living conditions, as she can no longer rely upon the applicant for financial support.

In support of the motion, the applicant submitted a letter concerning the applicant's mother's mental health services, a previously submitted psychological evaluation and background country conditions for El Salvador. The entire record was reviewed and considered in rendering a decision on the motion.

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

> (B) ALIENS UNLAWFULLY PRESENT.-
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> (i) In general.- Any 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.
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> . . .

> (v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant is a native and citizen of El Salvador who claims to have entered the United States without admission or parole on September 16, 2002. The applicant was granted employment authorization in 2003 and 2004 as a derivative on his mother's asylum application. The applicant did not adjust his status and remained in the United States until his departure on July 12, 2012. Accordingly, the applicant accrued over one year of unlawful presence in the United States, is seeking readmission within 10 years of his last departure, and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility on motion.

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 child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother 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 record reflects that the applicant is a 34-year-old native and citizen of El Salvador. The applicant's mother is a 48-year-old native of El Salvador and lawful permanent resident of the United States. The applicant is currently residing in El Salvador and the applicant's mother is residing in Long Beach, California.

The AAO previously determined that the applicant had demonstrated that his mother would experience extreme hardship upon relocation to El Salvador. The AAO noted that the applicant's mother has been residing in the United States since February 27, 1990 and now has longstanding employment and extensive family ties. The AAO also considered the applicant's

mother's ongoing treatment in the United States for chronic medical conditions as well as the issuance of a travel warning concerning El Salvador.

Counsel for the applicant asserts that the applicant's mother is suffering from psychological disorders that have affected her physical health. Counsel further asserts that the applicant's mother has extreme worries about the applicant residing in El Salvador due to the current country conditions. Counsel contends that both the applicant's mother's psychological and physical health will continue to deteriorate.

On motion, the applicant resubmitted a psychological evaluation of his mother diagnosing her with major depressive disorder, recurrent and severe without psychotic features and generalized anxiety disorder. As noted, the applicant's mother reported problems with concentration headaches and restlessness. The psychological evaluation asserted that the applicant's mother's symptoms, which have been addressed since October 2010, worsened upon separation from the applicant and are at risk of worsening further. The AAO's previous decision also noted that though the evaluation states that the applicant's mother's symptoms hinder her ability to perform simple daily tasks in her normal activities, the record reflects that the applicant's mother is employed as a part-time housekeeper. The psychological evaluation recommended outpatient mental health services.

The record contains a recent letter, dated January 18, 2014, verifying that the applicant's mother has been receiving outpatient mental health services since October 1, 2010 and has participated in four treatment sessions. The letter stated that the applicant's mother has been prescribed Sertraline to assist with her depressive symptoms, which she has been taking since November 2013. The letter, written by the same licensed marriage and family therapist who conducted the applicant's mother's psychological evaluation, does not contain any further information concerning the applicant's mother's current psychological condition.

As noted previously, the applicant's mother asserts that she worries about the applicant's safety in El Salvador and his absence has aggravated her diabetes and blood pressure. The AAO, in its prior decision, noted that though the record contains information indicating that the applicant's mother has been diagnosed with chronic diabetes and hypertension, a physician's letter indicates that she became a patient with the practice on September 24, 2012, and did not address whether the applicant's mother's chronic conditions worsened after the applicant's July 2012 departure. The record does not contain any updated information concerning the applicant's mother's medical health.

Counsel for the applicant asserts that the applicant's mother has had to downgrade her living conditions as she can no longer depend on the applicant for financial support. As noted in the previous decision, though the applicant's mother and the applicant both contended that the applicant provided her with financial assistance, the record only contains a 2012 tax return for the applicant's mother and her husband. The record did not contain any financial documentation for the applicant in the United States or any other members of the applicant's mother's household, including her three daughters. The record does not contain any updated financial

documentation. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

It is acknowledged that separation from a child often creates hardship for both parties, and the evidence indicates that the applicant's mother is suffering emotional hardship due to separation from the applicant. However, in the aggregate, there is insufficient evidence in the record to demonstrate that the applicant's mother is suffering from hardship due to separation from the applicant that is beyond the common results of the inadmissibility or removal of a family member.

In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if she relocated to El Salvador. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

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 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.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident mother as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in balancing positive and negative factors to determine whether the applicant merits this waiver as a matter of discretion.

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. Accordingly, the prior decision of the AAO is affirmed, and the underlying application remains denied.

**ORDER:** The motion is granted and the prior decision of the AAO dismissing the appeal is affirmed