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

[redacted]

Date: OCT 0 8 2014 Office: CIUDAD JUAREZ FILE: [redacted]

IN RE: Applicant: [redacted]

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)(v).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 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 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 ten years of her last departure. She is married to a lawful permanent resident. 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 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 lawful permanent resident spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 20, 2010.

On appeal, filed in February 2010 and received by the AAO on July 1, 2014, the applicant's spouse states that he has been suffering from depression and financial hardship due to separation from the applicant and that he cannot relocate to Mexico because he cannot leave his job and family in the United States and would lose his permanent residency status.

The record contains, but is not limited to, the following documentation: statements from the applicant, the applicant's spouse and children; copies of money transfers; a letter from the applicant's spouse's employer; medical and educational records related to the applicant's grandson; a copy of an insurance card for the applicant's spouse; copies of tax returns for the applicant's spouse for the years 1997 – 2009; statements from friends and acquaintances of the applicant; country conditions materials on the conditions in Mexico, including articles on poverty and health and crime rates; and photographs of the applicant in Mexico.

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) 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.
>
> . . . .

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.

The record indicates that the applicant entered the United States without inspection in February 2004 and remained until she departed in March 2008, a period of more than one year. As the applicant was unlawfully present in the United States for more than one year from 2004 until March 2008, and is now seeking admission within ten years of her last departure from the United States, she 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 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. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (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 entire record was reviewed and all relevant evidence considered in rendering this decision.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. 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 children will not be separately considered, except as it may affect the applicant's spouse.

The applicant's spouse asserts on appeal that he would be unable to relocate to Mexico with the applicant because he would lose his permanent resident status in the United States, lose his employment and health insurance benefits in the United States and would have to sever ties with his U.S. resident family and long-term community ties with the United States. He further states that he would be unable to find a job due to age discrimination, and that having to live in Mexico would pose problems if he were to develop a medical condition because of the remote location of his residence there.

The record contains evidence which corroborates that the applicant's spouse is employed in the United States and is covered by medical insurance. The record also contains statements from family members of the applicant's spouse, including his children and grandchildren. This evidence is

sufficient to establish that the applicant's spouse has significant family and community ties in the United States.

The record also contains country conditions materials which discuss the conditions in Mexico. These background materials discuss crime and poverty in Mexico, as well as "traveler's diarrhea", however, they do not establish that the applicant's spouse would be unable to find employment in Mexico due to age discrimination.

The record indicates that the applicant's spouse is 69 years old but there is insufficient evidence indicating that he currently has any medical conditions. Without evidence to corroborate that he has a medical condition and would require specific medical treatment in Mexico it would be speculative to assume that he could not receive proper medical care if he relocated to Mexico.

The record contains statements from the applicant's children, corroborating that her spouse has substantial family ties to the United States. In addition, the record indicates that the applicant's spouse has resided in the United States for a significant period of time. We note that the applicant is currently a lawful permanent resident, and that if he were to relocate to Mexico he could lose that status. As noted above the applicant's spouse is employed and has health insurance in the United States. Although there is no single factor which amounts to extreme hardship, when these hardships are considered in the aggregate they rise to a level of extreme hardship upon relocation.

With regard to hardship due to separation, the applicant's spouse explains that he has been suffering from depression and struggling to support two households, his own and that of his wife and children in Mexico. The applicant's spouse also states that he needs the applicant in the United States to assist him physically with preparing his meals, as well as to help care for his daughter and grandson who has been diagnosed with autism.

The record contains copies of money transfer receipts indicating that the applicant's spouse is sending money to the applicant in Mexico. The record also contains tax returns for the applicant from 1997 through 2009. An employment letter on behalf of the applicant's spouse states that he works full time for $12 an hour and a tax return from 2009 indicates that he reported $26,807 in earnings that year. His tax returns, however, do not indicate that he claimed dependents and it cannot be determined that he is financially supporting his daughter and autistic grandson. The record also contains a rental lease for an apartment which costs $744 a month. However, this evidence does not establish that he is unable to meet his financial obligations based on his current income.

The record does contain medical and educational records pertaining to the applicant's grandson corroborating assertions that he has been diagnosed with autism, but as noted above, the spouse's tax returns do not indicate that he has claimed any children as dependents and there is insufficient evidence to demonstrate that the grandson and his mother are dependent on him for financial support. We also acknowledge that the applicant's spouse has several adult children who reside in the United States, and it is not clear that they would be unable to provide physical or financial support to the applicant's spouse in order to mitigate the impacts of separation.

The record contains statements from several of the applicant's spouse's children as well as friends and acquaintances. The statements indicate that the applicant is a person of good moral character, that she and her spouse have been married for a long time and love and support each other. We recognize that separation for a 10 year period will pose emotional difficulties for the applicant's spouse, but this evidence is not sufficient to distinguish any emotional impact on the applicant's spouse from the common hardship of separation experienced by the relatives of inadmissible spouses who remain in the United States.

As discussed above, the record does not contain sufficient evidence to establish that the applicant's spouse has any medical conditions requiring physical assistance from the applicant, or that the adult children he has in the United States would be unable to assist or support him physically or financially to mitigate the impact of separation from his spouse. The record does not contain sufficient evidence to establish that the applicant's spouse is financially or physically supporting his daughter and autistic grandson.

We recognize that the applicant's spouse may experience emotional difficulties as a result of separation, but even when the hardships due to separation are considered in the aggregate they do not rise to the level of extreme hardship.

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(s) in this case.

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 remains entirely with the applicant. 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.