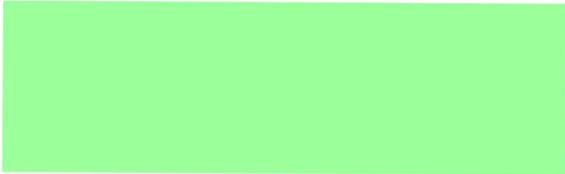


(b)(6)

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

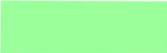


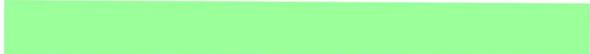
U.S. Citizenship  
and Immigration  
Services



DATE: FEB 06 2015

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:

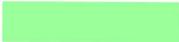
Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office



**DISCUSSION:** The Director, Nebraska Service Center denied the waiver application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on a motion. The motion will be granted and the prior decision of the AAO in its appeal dismissal is affirmed.

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, 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 her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident spouse and child.

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 February 1, 2014. On appeal, we determined that though the applicant established extreme hardship upon separation, the applicant failed to establish extreme hardship for a qualifying relative on relocation and dismissed the appeal accordingly.

In the applicant’s motion, the applicant submitted additional evidence to demonstrate that her qualifying relative would suffer extreme hardship upon denial of her waiver application. The applicant submitted financial documentation, affidavits of support, psychological and medical records for the applicant’s spouse, family photographs, a letter from the applicant’s spouse, identity documents and background country conditions concerning Mexico. The entire record was reviewed and considered in rendering this decision.

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

**(B) ALIENS UNLAWFULLY PRESENT.-**

(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.

....

(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 record reflects that the applicant entered the United States in December 2010 with a border crossing card, with authorization to remain until March 27, 2011. The applicant remained in the United States until her departure to Mexico in March 2013. The applicant's accrued unlawful presence in the United States from March 28, 2011 until her departure in March 2013. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for more than one year and seeking admission within ten years of her departure from the United States. The applicant does not dispute this ground of 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 his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-Morales*, 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 47-year-old native and citizen of Mexico. The applicant’s spouse is a 47-year-old native of Mexico and lawful permanent resident of the United States. The applicant is currently residing with her son in [REDACTED] Mexico and the applicant’s spouse is currently residing with his stepchild in [REDACTED] California.

The AAO previously determined that the applicant had demonstrated that her spouse would experience extreme emotional, medical and financial hardship upon separation from her. The applicant’s submitted financial documentation indicating that he was providing financial support to the applicant and their son in Mexico, in addition to supporting himself in the United States. The applicant’s spouse asserted that he had been forced to borrow money and the record contains supporting documentation of his financial situation, including past due household bills. The applicant’s spouse submitted a letter dated September 11, 2014, indicating that the applicant has secured employment in a factory in Mexico, but that her income of approximately 65 dollars a

week has brought no financial relief. The record reflects that the applicant's spouse has continued to send the applicant money in Mexico despite her employment.

The record contains letters from the applicant's spouse's physicians and a psychological evaluation stating that his limited ability to deal with stress has resulted in physical ailments and led to obsessive-compulsive behaviors. The applicant's spouse asserts that his health has been worsening and that on August 29, 2014, he attended an emergency consultation because he was feeling drained, tired and dizzy. The record contains a letter from the applicant's spouse's physician from that same date, stating that the applicant's spouse is evaluated regularly, on daily medication to manage his condition and is following a diabetic diet.

The applicant's spouse asserts that he fears for the applicant's safety in Mexico and that he has begun to isolate himself. The applicant's spouse has been diagnosed with major depressive disorder, recurrent, severe without psychotic features, obsessive-compulsive disorder, diabetes mellitus and dyslipidemia. The record indicates that the applicant's spouse has been participating in group therapy sessions and contains a follow up letter from a psychological assistant stating that the applicant's spouse has shown moderate improvement in his psychiatric condition and a noticeable improvement in his current symptoms and functioning.

There is sufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant. Our prior finding on that will not be disturbed.

The applicant's spouse asserts that he is unable to relocate to Mexico to reside with the applicant and their child because of the increase in crime in [REDACTED]. The applicant's spouse contends that he sometimes only stays in [REDACTED] two or three days at a time and, in concern for his safety, has limited his visits to once a month rather than every weekend. The record contains background country condition information relating to Mexico, specifically [REDACTED]. The Department of State has issued a travel warning for Mexico, dated August 15, 2014, stating that in [REDACTED], including [REDACTED] criminal activity along highways and beaches are a security concern and that the homicide rate has increased, mostly due to targeted criminal organization assassinations and turf battles between criminal groups. The record reflects that the applicant's spouse is a native of Mexico and the applicant and their son are currently residing with the applicant's spouse's mother in [REDACTED]. The record contains evidence of criminal concerns in [REDACTED] and the applicant's spouse has demonstrated that his concern for his safety would cause him some hardship upon relocation.

The applicant's spouse asserts that he is currently employed in the United States as a construction worker and that he cannot afford to lose his job upon relocation to Mexico. The applicant's spouse contends that the wage he would earn in Mexico would be significantly less than in the United States so that he would be unable to maintain a household upon relocation. As noted, the record reflects that the applicant is currently employed in Mexico and there is no information concerning the extent to which the applicant's spouse's relatives, including his mother, would be willing and able to assist in his relocation. There is also no supporting documentation in the

record indicating that the applicant's spouse, who works in construction, would be unable to earn a living wage, commensurate with the cost of living, in Mexico. It is acknowledged that the applicant's spouse's loss of his current employment would cause some financial hardship, but the evidence is insufficient to demonstrate the extent of this hardship.

It is acknowledged that the applicant would suffer hardship upon relocation to Mexico, but there is insufficient evidence in the record to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship.

The record does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon relocation, 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. 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 relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 AAO decision is affirmed.

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