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

[redacted]

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DATE: NOV 0 9 2012 OFFICE: CIUDAD JUAREZ FILE: [redacted]

IN RE: [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)(B)(v) and Section 212(g) of the Immigration and Nationality Act, 8 U.S.C. § 1182(g)

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. **Do not file any motion directly with the AAO.** 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by 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 claims to have entered the United States without admission or parole in 1993. The applicant was subsequently granted voluntary departure by an immigration judge on December 10, 2007 and departed from the United States on the same date. The applicant began to accrue unlawful presence in the United States on the date that he attained the age of eighteen, on [redacted] 2006. The applicant 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 ten years of her last departure from the United States. The consular officer determined that the applicant is also inadmissible to the United States pursuant to section 212(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1182(a)(1)(A)(iii)(I) for having a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior. The applicant is a beneficiary of an approved Petition for Alien Relative, as a stepchild of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with his family.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and that the applicant does not merit a favorable exercise of discretion. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated June 11, 2010.

On appeal, the applicant's stepfather asserts that the applicant has successfully completed an alcohol program and has become a devoted church member.

In support of the waiver application and appeal, the applicant submitted a letter, letters of support from his siblings, a letter from an alcohol program, a letter from a potential employer, identity documents, and medical records concerning his stepfather. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

Section 212(a)(1)(A) of the Act provides, in pertinent part:

In General: Any alien-... (iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General) –

. . . .

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior... is inadmissible.

Section 212(a)(1)(B) of the Act provides:

(1) Waiver Authorized – For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

Section 212(g) of the Act provides, in pertinent part:

Bond and Conditions for Admission for Permanent Residence of Mentally Retarded, Tubercular, and Mentally Ill but Cured Aliens. The Attorney General may waive the application of-

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulations prescribe.

The applicant was arrested on [redacted] 2007 for DUI alcohol and/or drugs pursuant to California Vehicle Code sections 23152(a) and (b) and driving without a valid driver's license pursuant to section 12500(a). The applicant failed to appear for arraignment pursuant to these

charges in the Superior Court of California, County of San Diego, and an arrest warrant was issued against the applicant on [redacted] 2007. A consular officer in Ciudad Jurarez, Mexico, determined that the applicant is inadmissible for medical class A alcohol abuse, pursuant to section 212(a)(1)(A)(iii)(I) of the Act. Based upon the applicant's prior criminal arrest for an alcohol-related offense within the past five years, the AAO affirms the consulate's finding.

The record contains the applicant's application for a waiver of this ground of inadmissibility, pursuant to section 212(g)(3) of the Act, received by the Centers for Disease Control and Prevention. In compliance with the waiver requirements, the applicant identified a specialist who agreed to evaluate the applicant and recommend any appropriate follow up or supervision. The record reflects that the applicant completed a three-month alcohol treatment program and participates in follow-up meetings twice a week. As such, the AAO finds that the applicant has complied with the waiver requirements of section 212(g)(3) of the Act.

However, the applicant is also inadmissible pursuant to 212(a)(9)(B)(i)(II) of the Act and must demonstrate extreme hardship to a qualifying relative if his waiver application is denied. 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 applicant's qualifying relative in this case is his U.S. citizen stepfather. The record contains references to hardship the applicant's siblings would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's siblings as a factor to be considered in assessing extreme hardship. In the present case, the applicant's stepfather is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's siblings will not be separately considered, except as it may affect the applicant's stepfather.

The record reflects that the applicant is a 24 year-old native and citizen of Mexico. The applicant's stepfather is a 46 year-old native of Guatemala and citizen of the United States. The applicant is currently residing in Mexico and his stepfather is residing in San Diego, California.

The applicant's sister submitted a letter on behalf of her father, stating that the applicant's stepfather suffers from heart problems. The record contains medical documentation concerning the applicant's stepfather stating that he suffers from chronic chest pain and dyslipidemia. The applicant's sister asserts that she takes her father to his doctor's appointments, but that she is busy with many tasks. The applicant's sister raises their father's concern that if he is seriously ill, he will not be able to get to the hospital if the applicant's sister is unavailable. It is noted that the applicant's sister is currently able to take her father to his doctor's appointments despite her busy

schedule. It is also noted that the applicant's Form I-601 indicates that his aunt also resides in San Diego, California. There is no information concerning whether the applicant's aunt could or would take the applicant's stepfather to his doctor's appointments, if necessary. Further, if the applicant's stepfather became suddenly and seriously ill, emergency services for medical transportation are available in the United States.

The applicant's siblings submitted letters stating that they miss the presence of the applicant in their lives. The applicant's sister's letter on behalf of the applicant's stepfather asserts that their family is concerned about the applicant's safety in Mexico and that his employment in the United States would boost their family's financial status. It is noted that there is no evidence concerning country conditions in Mexico, including the area where the applicant is currently residing. Further, there is no evidence concerning the applicant's stepfather's financial obligations and no indication that the applicant's stepfather has been unable to meet these obligations. In the aggregate, there is insufficient evidence in the record to find that the applicant's stepfather is suffering from a level of hardship due to separation from the applicant beyond the common results of inadmissibility or removal of a son.

The applicant's stepfather has made no assertions concerning any hardship he would experience if he relocated to Mexico to reside with the applicant. It is noted that the applicant's stepfather is a native of Guatemala, which shares an official language with Mexico. The applicant's sister's letter indicates that the applicant's stepfather is employed and attends doctor's appointments in the United States. The applicant's mother is also a native of Mexico and there is no information concerning the extent to which she has any family members residing in Mexico who would or could assist in their relocation. In this case, the record contains insufficient evidence to show that the hardships faced by the qualifying relative, if he were to relocate to Mexico, rise to the level of extreme hardship.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal

or inadmissibility of a son to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen stepfather 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 determining whether the applicant merits a waiver as a matter of discretion. However, the applicant has established that he has complied with the requirements of Section 212(g) of the Act for a waiver of medical inadmissibility.

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.