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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: FEB 0 8 2013 Office: ANAHEIM (MEXICO CITY) FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

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,

Ellen C. Johnson

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his wife and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, the applicant's wife contends she has been enduring extreme physical, mental, and emotional hardship since her husband's departure from the United States.

The record contains, *inter alia*: two letters from the applicant's wife, Ms. ; a copy of the birth certificate of the couple's U.S. citizen child; two psychological evaluations; letters of support; a letter from the applicant's previous employer; copies of bills, rent receipts, and other financial documents; and an approved Petition for Alien Relative (Form I-130).[1] The entire record was reviewed and considered in rendering this 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 -
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> . . . .
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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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> . . . .

[1] The record also contains numerous articles that are written in Spanish and have not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Consequently, these articles cannot be considered.

> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (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 Attorney General [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.

In this case, the record shows, and the applicant does not contest, that he entered the United States in 1996 without inspection and remained until February 2011. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in February 2011. Therefore, the applicant accrued unlawful presence of over thirteen years. He now seeks admission within ten years of his 2011 departure. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of his last departure.

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.

In this case, the applicant's wife, Ms. [redacted] states that since her husband's departure from the United States, she has been suffering physically, mentally, and emotionally. She states that they have a son together and that she needs her husband's help to raise their son. She states her husband was the sole financial support for their family and that since his departure, she has been forced to find a job to support herself and their son, but only earns minimum wage. She states she has been relying on help from family members and friends. In addition, Ms. [redacted] states she has been traveling to Mexico frequently to visit her husband and, as a result, has incurred extra travel expenses. She also contends she has been diagnosed with clinical depression and adjustment disorder. According to Ms. [redacted] she is taking prescription medications, but still finds it hard to get out of bed every day and experiences an overall loss of energy, a loss of appetite, and is seriously depressed. Furthermore, Ms. [redacted] states she has lived in the United States her entire life and has no ties to Mexico. She states she has only been to Mexico sporadically and does not want to raise her son there. She states it is a dangerous place with a lot of violence.

After a careful review of the record, there is insufficient evidence to show that the applicant's wife, Ms. [redacted], has suffered or will suffer extreme hardship if her husband's waiver application were denied. If Ms. [redacted] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding financial hardship, there are inconsistent documents in the record and, therefore, an

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incomplete picture of Ms. hardship. For instance, the record contains a letter from " ' indicating that he is the owner of the property that he has been leasing to the applicant and Ms. since July of 2009. According to the applicant and Ms. pay $682 per month in rent. However, according to Ms. March 30, 2012 letter, she pays $650 per month for rent and copies of rent receipts in the record also indicate she pays $650 per month in rent. In addition, according to the psychological evaluation in the record, Ms. has lived with her in-laws for approximately two years. The letter from makes no mention of Ms. in-laws. Furthermore, the record contains copies of water bills and gas bills; however, the copies of the bills in the record have receipts covered over the name listed on the account. The only bill in the record that lists a name is an AT&T phone bill that is not listed in Ms. name, but rather, is in the applicant's father's name, . Furthermore, Ms. contention that she has been receiving assistance from friends and family members is corroborated by her cousin's statement that she "receive[s] assistance from all of us," but is contradicted by the psychological evaluation in the record which states she "receives no financial help from her in-laws or her family members" and "she does not have financial support from anyone." Although the record contains one pay stub corroborating Ms. contention that she is earning minimum wage, there is insufficient information in the record addressing Ms. entire financial situation. It is unclear exactly how much she pays in rent, whether she is "renting" from a family member, or whether she is responsible for the bills as opposed to her father-in-law. Without more detailed and consistent information, the AAO is unable to assess the extent of Ms. hardship.

Regarding Ms. depression and emotional distress, the record contains a letter from a psychiatrist and a report of psychological evaluation. The letter describes Ms. extreme anxiety and depression in anticipation of her husband's departure for Mexico and the report, written five months after the applicant's departure, describes Ms. symptoms of depression and anxiety including constant crying, difficulty sleeping, lack of appetite, and constant stomachaches, diagnosing her with Major Depressive Disorder and Anxiety Disorder. Although the AAO is sympathetic to the family's circumstances, the record does not show that Ms. situation, or the symptoms she is experiencing, are unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Even considering all of the evidence in the aggregate, there is insufficient evidence for the AAO to conclude that Ms. has suffered or will suffer extreme hardship if she decides to remain in the United States.

Furthermore, the record does not show that Ms. would suffer extreme hardship if she relocated to Mexico to be with her husband. Ms. contention that she "ha[s] lived in the United States [her] whole life and [has] no ties to Mexico," is directly contradicted by the report of psychological evaluation which contends that although she was born in the United States, she was raised in Mexico by her mother until the age of sixteen. According to the psychological evaluation, Ms. attended high school in Mexico and has eight siblings, three of whom continue to live in Mexico. In addition, a letter of support in the record contends that "we the author of the letter, and Ms.] are from the same township in Mexico." Therefore, the record does not support

Ms. contention that she has never lived in Mexico and has no ties to Mexico. Furthermore, although the AAO recognizes that the U.S. Department of State has issued a Travel Warning for parts of Mexico, including where the applicant was born and is currently residing, *U.S. Department of State, Travel Warning, Mexico,* dated November 20, 2012, the Travel Warning alone is insufficient to show extreme hardship. In sum, the record does not show that Ms. relocation to Mexico would be any more difficult than would normally be expected. Even considering all of the evidence cumulatively, the record does not show that Ms. hardship would be extreme, or that their situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* 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.