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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: OCT 0 3 2013 Office: ANAHEIM File:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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:

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 International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision 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 one year or more. She is seeking a waiver of inadmissibility in order to immigrate to the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, October 23, 2012. The AAO similarly concluded that the record evidence did not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, and dismissed her appeal. *Decision of the AAO*, June 26, 2013.

On motion, the qualifying relative provides additional support for the claim that he is suffering, and will continue to suffer, extreme hardship due to the waiver denial. In support of the motion, he provides documentation including: untranslated Spanish language documents; translated Spanish language documents; updated statements of the applicant and her husband; supportive statements; photographs; financial information, including a tax return, pay stubs, bills for living expenses, and Western Union statements; and news articles. The record also contains an appeal brief, hardship and support statements, and a green card, as well as of evidence submitted with the waiver application.

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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> (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 [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....

The record indicates the applicant entered the United States sometime in 2009 without admission or parole and remained here until January 2012, when she departed to apply for an immigrant visa. The field office director found that she had thereby incurred inadmissibility for unlawful presence of one year or more, and the AAO agreed. She thus requires a waiver to return to the United States before January 2022.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident husband[1] 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 clear that "[r]elevant factors, though not extreme in themselves, must be considered

[1] He appears to have acquired lawful permanent resident status in July 2005. The AAO noted in addressing the appeal the lack of evidence supporting the claim on the first Form I-290B that the applicant's husband is a U.S. citizen. On motion, no additional evidence of immigration status is provided.

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 v. INS.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

Regarding hardship from separation, despite a psychological evaluation diagnosing the applicant's husband with stress, anxiety, and depression, the record fails to establish that he has incurred emotional hardship from his wife's absence beyond the normal and typical impact of separation from a loved one. Based on the qualifying relative's self-reported symptoms, including headaches, fatigue, and insomnia, the social worker recommends that he receive psychotherapy and follow up with his family doctor should his symptoms prevent him from carrying out activities of daily living. *See Psychosocial Assessment,* July 17, 2013. There is nothing on record to substantiate that her absence has caused any specific harm and no indication that he has undertaken the counseling advised. The evaluation reports that after the applicant left, her husband began smoking to calm his nerves. While noting that the applicant's husband had slightly elevated blood pressure when examined for neck pain and facial numbness, the family doctor states that testing was needed to determine whether hypertension was present and, meanwhile, advised him to adopt lifestyle changes including exercise and a change in diet. There is no medical evidence for the qualifying relative's claim that his health is deteriorating, and the AAO notes that he visits his wife regularly – four times in 2012 -- to ease the emotional pain of separation. The record reflects that he also has a local support network of family and friends.

Regarding financial hardship, we previously noted the qualifying relative's claims to be earning between $34,000 and $40,000 annually and sending his wife about $2,000 per month for her expenses. The updated record contains a 2012 joint tax return showing income exceeding $65,000,

as well as copies of documents that are largely illegible and untranslated.[2] There is no evidence that the qualifying relative's annual income is insufficient to meet his expenses or that he requires his wife's contribution to avoid economic problems. The record thus does not substantiate the applicant's expenses, show the amount of economic help she is receiving from her husband, or establish that supporting his wife abroad is a financial burden. In addition, there is no documentation for the claim that he is financially responsible for his parents or other relatives. Nor is there evidence that the applicant contributed to household income, and the social worker's report indicates she was a homemaker not gainfully employed outside the home. Without documentation of the applicant's pre-departure financial contribution to the household, current living expenses, or evidence her husband cannot meet his financial obligations, we cannot determine that he is unable to support himself financially without the applicant's presence. While we are sensitive to the potential impact of the applicant's departure on her husband, she has provided insufficient evidence to show that her absence has caused him economic problems.

Documentation on record, when considered in its totality, does not show that the applicant's husband is suffering extreme hardship due to the applicant's inability to reside in the United States. The AAO recognizes that the qualifying relative will endure some hardship as a result of separation from the applicant. However, their situation is typical of individuals separated as a result of removal or inadmissibility, and the AAO therefore finds that the applicant has failed to establish hardship to a qualifying relative that rises to the level of "extreme" under the Act.

Regarding relocation, we previously considered the qualifying relative's concerns for his wife's safety in Mexico and noted that no U.S. government advisory was in effect for Guanajuato state, where the applicant lives. While the applicant provides partial translations[3] of two news articles regarding violence in a nearby town, the reports are undated and fail to establish that the applicant lives in a dangerous area. We note that an updated U.S. Department of State (DOS) notice again shows no advisory in effect for Guanajuato, *see Travel Warning—Mexico,* DOS, July 12, 2013. There is no evidence that the applicant or her husband has been threatened or that moving back to his hometown would represent a safety risk.

The qualifying relative also claims that it would be hard for him to move to Mexico and find work, but fails to show that he has looked or applied for a job there or that his wife is unable to help out by working. While the record contains an Internet document with minimum wage information, the basis for its data is not given, there is no indication for what jobs the applicant or her husband are qualified, there is nothing establishing the wage they would likely receive, and nothing showing the purchasing power of these wages in Mexico. The record reflects that the applicant emigrated from his native Mexico at the age of 15, and has lived here for over eight years. There is no documentation that he owns property here, has any medical conditions for which treatment is unavailable in Mexico, or would experience a negative impact from reuniting with his wife abroad beyond the common results of inadmissibility or removal.

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[2] The applicant's burden of showing extreme hardship extends to translating foreign language documents to English. *See* 8 C.F.R. § 103.2(b)(3).

[3] The first consists of the headline of an unnamed publication, while the second contains the headline and first two paragraphs of a longer article. Both articles are undated.

The AAO is sensitive that returning to Mexico might be inconvenient for the qualifying relative, or entail economic sacrifices. However, without additional evidence showing how relocating to his homeland will adversely impact her husband, the applicant cannot show hardship that rises to the level of "extreme." The AAO thus concludes that, were the applicant unable to reside in the United States due to her inadmissibility, the record does not establish that a qualifying relative would suffer extreme hardship if he relocated to live with the applicant.

The documentation on record, when considered in aggregate, reflects that the applicant has not established her husband will suffer extreme hardship if she is unable to live in the United States. The AAO recognizes that the applicant's husband will endure hardship as a result of the applicant's inability to immigrate. However, his situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to her husband as required under the Act.

In proceedings for application for waiver of grounds of inadmissibility, 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 and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The prior decision of the AAO is affirmed.