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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 0 2 2013 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 (the Act), 8 U.S.C. § 1182(a)(9)(B)(v); Section 212(i) of the Act, 8 U.S.C. § 1182(i); and section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11).

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 Director, Nebraska Service Center. The application 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 was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 readmission within 10 years of departure from the United States. She was also found inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States through fraud or material misrepresentation and under section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for knowingly encouraging, inducing, assisting, abetting or aiding her minor child to enter the United States in violation of the law. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen spouse. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v); section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11).

In a decision dated January 24, 2013, the director concluded that the applicant did not establish that her qualifying relative would suffer extreme hardship as a result of separation from the applicant and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the applicant's spouse will in fact suffer from extreme hardship as a result of separation from the applicant.

In support of the waiver application, the record includes, but is not limited to: a brief from counsel; biographical information for the applicant, her spouse and their children; statements from the applicant's spouse; a statement from the applicant; letters of support from friends of the applicant and her spouse; personal and professional financial records for the applicant's spouse; school records for the applicant's children; a psychological evaluation of the applicant's spouse; country conditions information on Mexico; and documentation of the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more. Section 212(a)(9) of the Act provides, in pertinent part, that:

> (B) ALIENS UNLAWFULLY PRESENT.-
> (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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> ...
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> (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 indicates that the applicant entered the United States without inspection in December 2002 and remained unlawfully in the United States through May 2011, accruing unlawful presence during that entire period. As the period of unlawful presence accrued is one year or more, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from her departure from the United States. She does not contest this ground of inadmissibility on appeal.

The record also indicates that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States through fraud or material misrepresentation and under section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for knowingly encouraging, inducing, assisting, abetting or aiding her minor child to enter the United States in violation of the law.

Section 212(a)(6)(C) of the Act provides in pertinent part:

> (i)...Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
>
> ...

The record indicates that the applicant sought to procure a visa to the United States in 2011 by misrepresenting the amount of time that she had resided in the United States without authorization -- initially stating that she had only been unlawfully present in the United States for one month. The applicant only disclosed that she had been unlawfully present in the United States for a period of one year or more after being confronted with derogatory evidence by a consular officer. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having

attempted to procure a visa to the United States through fraud or willful misrepresentation of a material fact. The applicant does not contest the inadmissibility finding on appeal.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The applicant was also found to be inadmissible under section 212(a)(6)(E) of the Act, which states, in relevant part:

> (E) Smugglers
> (i) In general. Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.
> (ii) Special rule in the case of family reunification. Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.
> (iii) Waiver authorized. For provision authorizing waiver of clause (i), see subsection (d)(11) of this section.

The record reflects that the applicant encouraged, induced, assisted, abetted, or aided in the unlawful entry of her 10-year-old son to the United States in July 2009. As a result of the applicant's role in bringing her minor son into the United States unlawfully, she is inadmissible under section 212(a)(6)(E) of the Act. The applicant does not contest her inadmissibility on appeal.

Section 212(d)(11) States, in relevant part:

> (11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application

> of clause (i) of subsection (a)(6)(E) of this section in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 1181(b) of this title and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

A waiver under this section may be granted for humanitarian purposes, to assure family unity, or if it is otherwise in the public interest. *Id.* The AAO, however, will first consider whether the applicant has met the criteria for a waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act. If the applicant does not meet the more stringent criteria for those waivers, no purpose would be served in determining her eligibility for a waiver under section 212(d)(11).

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent, the same standard as required under section 212(a)(9)(B)(v) of the Act. In this case, the applicant's qualifying relative is her spouse. Hardship to the applicant or her children is only relevant insofar as it is shown to affect the hardship to the qualifying relative. 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 deportation, 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, 885 (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 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.

We will first consider the hardship claimed to the applicant's U.S. citizen spouse if he were to remain in the United States and be separated from the applicant. On appeal, counsel for the applicant states that the applicant's spouse is at risk of losing his business as a result of his need for the applicant's assistance as well as the impact on his business of the costs of his travel to visit the applicant and support her and their children financially in Mexico. The applicant's spouse states that the applicant managed his businesses and he has not been able to replace her after her departure. As a result, he states that his businesses have been losing revenue. The record contains documentation regarding the applicant's spouse's business in the United States, a fruit stand and a restaurant. The documentation regarding the businesses includes 2011 Federal Income Taxes for the restaurant reporting an income of $11,528, numerous pages of bank statements from 2012 all with a positive balance, as well as invoices. The record also contains the applicant's spouse's personal 2011 Federal Income Tax Returns, which indicates that he reported an adjusted gross

income of $35,519 for that year, which does not differ substantially from the $37,626 that he claimed on his 2009 Federal Income Tax Returns. Although numerous records were submitted, the records do not clearly indicate the loss of revenue reported by the applicant's spouse nor do the records indicate what hardship the applicant's spouse is suffering as a result of his stated loss of revenue. Moreover, the applicant's spouse claims that his travel to Mexico made him lose track of renewal of the insurance for his business and that as a result his businesses were without insurance for a period of time in 2012. Additionally, records indicate that the applicant's spouse sent the applicant an average $1,000 per month in 2012, and traveled to Mexico on numerous occasions. The record does not make clear, however, how these factors resulted in financial hardship to the applicant's spouse. Based on the information provided, it is not possible to determine the degree of financial hardship suffered by the applicant's spouse.

Counsel also states that the applicant's spouse's children, who reside in Mexico with the applicant, are suffering from extreme emotional hardship as a result of their separation from him. As stated above, Congress did not include children as qualifying relatives under sections 212(a)(9)(B)(v) and 212(i) of the Act, thus hardship to the children can only be considered as it relates to the hardship suffered by the applicant's spouse. In regards to the emotional hardship he is experiencing, the applicant's spouse states that he misses his children and he wants his family to be together. The record also contains a psychological evaluation of the applicant's husband, dated July 16, 2012, noting that the applicant's spouse "could be devastated psychologically and emotionally if he were separated from m his wife" and that he is "already presenting emotional problems such as symptoms of depression, anxiety, and tension." The psychologist recommended that the applicant attend individual psychotherapy as well as consultation with a psychiatrist to determine if antidepressant medication could be avoidable. The new evidence submitted on appeal, however, did not contain any follow-up regarding the applicant's spouse's emotional and psychological health. The AAO recognizes the impact of separation on families, and recognizes that the applicant's spouse is suffering hardship as a result of separation from the applicant, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

The Field Office Director found that the record indicated that the applicant's spouse would suffer extreme hardship were he to relocate to Mexico, but that decision seems to have been based in part on the facts of the case at that time which indicated that the applicant's spouse was caring for his children in the United States, as well as managing his businesses. The record now indicates that the couple's children reside in Mexico with the applicant. As a result, the record indicates that the hardship that the applicant's spouse would suffer were he to relocate to Mexico would be the loss of his business and his property in the United States. The record, however, does not indicate what the applicant's spouse's financial status would be were he to sell his businesses and his property. Additionally, the record does not indicate what the applicant's spouse's remaining family ties are to the United States. The AAO recognizes the applicant's spouse's difficult position in regards to his businesses; however, as stated above the inability to pursue one's chosen profession has been found to be one of the common or typical results of inadmissibility and not the type of hardship that is considered extreme. *See generally Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 568; *Matter of Pilch, 21 I&N Dec. at 632-33*; *Matter of Ige, 20 I&N Dec. at 885*; *Matter of Ngai,* 19

I&N Dec. at 246-47; *Matter of Kim,* 15 I&N Dec. at 89-90; *Matter of Shaughnessy,* 12 I&N Dec. at 813. Financial hardship to the applicant's spouse as a result of losses in the sale of his property or businesses would be relevant to the hardship determination; however, the record does not establish what losses the applicant's spouse would face. Although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant submitted country conditions information concerning Mexico indicating the economic condition and levels of violent crime in that country. The AAO also takes note of the November 20, 2012 U.S. Department of State Travel Warning for Mexico. The record, however, does not indicate how those conditions would impact the applicant's spouse. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158 at 165. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Mexico, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse's concern 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. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in sections 212(a)(9)(B)(v) and 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

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 to the level of extreme hardship. The AAO therefore finds that the applicant has

failed to establish extreme hardship to a qualifying relative as required under sections 212(a)(9)(B)(v) and 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether she merits a waiver as a matter of discretion.

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.

ORDER: The appeal is dismissed.