U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, D.C. 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

H6

[redacted]

DATE: OCT 0 4 2011

OFFICE: [redacted]

FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 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 more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and family.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated January 16, 2009.

On appeal, Counsel asserts that the applicant's U.S. citizen wife would suffer extreme hardship of an emotional, physical, and economic nature if her husband's waiver is not granted. See *Appeal Brief*, undated.

The record contains the following documents submitted on appeal: *Form I-290B*, Notice of Appeal; various photo identifications for the applicant; a psychological evaluation for his wife; marriage certificate and birth certificates for the applicant's wife and two children; first page only of 2007 and 2008 tax returns; loan past due notice; auto policy cancelation notice for non-payment of premiums; auto loan statement; U.S. State Department Travel Warning and an internet news print-out on Mexico. The record also contains previously submitted documents, including but not limited to: the applicant's wife's hardship letter; *Forms I-130* and *I-485* and supporting documents including complete tax returns and W-2s for 2002 to 2005, and two employment verification letters from that period. The record contains several Spanish language documents as well, including a birth certificate and four letters/documents of unknown content. Pursuant to 8 C.F.R. § 103.2(b)(3), the submission of any document containing foreign language must be accompanied by a full certified English language translation.[1] As the required translations have not been submitted, the AAO is unable to consider these documents. Accordingly, the entire record, with the exception of the Spanish language documents, was reviewed and considered in rendering a decision on the appeal.

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

(B) ALIENS UNLAWFULLY PRESENT.-

[1] 8 C.F.R. § 103.2(b)(3). Translations. Any document containing foreign language submitted to USCIS shall 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.

> (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 [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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection in or about April 2000 and remained until in or about October 2007, when he voluntarily departed. The applicant accrued unlawful presence during the entire time, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 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 wife states that separation from her husband has been difficult, causing economic and emotional hardship for herself and her children. See *Hardship Letter*, undated but stamped "Received December 3X, 2007." She states that it will be difficult for her to be in the US without

the applicant, that her children are "being very sad for not having their father with them they were never separated from him," and that she is trying to find a job, to support her children. *Id.*

[redacted] asserts that the applicant's wife rented her house out because she could not afford the mortgage; moved with her two children into a single room in a friend's home with whom they are now uncomfortable; she and the applicant used to stagger their work hours so that one of them could always be with the children who are now being deprived of parental affection. *Id.* [redacted] diagnoses the applicant's wife with severe depression, extreme anxiety or panic, and believes she is "on the verge of a nervous breakdown." *Id.* She asserts that the applicant's wife wakes during the night and cannot get back to sleep due to negative thoughts/worries; is neglecting the housekeeping and her clothes; struggling not to neglect her children; and fighting every morning to get up to go to work. *Id.* The clinical counselor asserts that the applicant's wife presented symptoms which include changes in sleeping and eating patterns; loss of energy, headaches, stomach aches or otherwise unexplained aches and pains; diminished interest and enjoyment of previously pleasurable activities; difficulty concentrating or making decisions; neglecting responsibilities and personal appearance; a depressed mood; and worthlessness. *Id.* She lists as "possible contributing factors:" money problems, cramped living conditions; the absence of a loved one; chemical imbalances, sleep deprivation; negative self-talk, self criticism, pessimistic thinking, low self-esteem; and doubts about the meaning of life. *Id.* [redacted] asserts that the applicant's wife's "survival skills are running low, she cannot endure such separation without taking a toll on her mental health," and "she is falling apart and that is impairing her function in society, especially at work and as a mother." *Id.* [redacted] notes that she has recommended that the applicant's wife visit a physician for a medication evaluation, and has advised that she seek counseling. *Id.*

No evidence was submitted to suggest that the applicant's wife has consulted a physician or sought counseling, nor was evidence submitted to explain if/why she chose not to do so. The AAO acknowledges [redacted] evaluation and professional opinion. Her findings, however, appear to be based on symptoms reported by the applicant's spouse and no evidence has been submitted to corroborate the self-report. There is no evidence that shows a decline in work performance or household maintenance, such as a letter or disciplinary notice from her employer, or even affidavits from some of the friends with whom she lives. The burden of proof is entirely upon the waiver applicant. The AAO recognizes difficulties faced by the applicant's wife, but those described do not take this case beyond those hardships ordinarily associated with removal of a family member, and the evidence is insufficient to support a finding of extreme hardship.

[redacted] also references hardship she believes that the applicant's children are experiencing/will experience if the waiver application is denied. See *Psychological Evaluation*, dated February 7, 2009. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v)of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse. No evidence has been submitted in support of the clinical counselor's assertions to show that the applicant's children are experiencing declining grades, other school problems, or any other of the assertions made by a third party who does not

appear to have evaluated the children personally. Without evidence such as report cards, letters from school teachers, administrators, or counselors, and/or a first-hand psychological evaluation of the children, the AAO is unable to make a determination that hardship to the children has caused extreme hardship to the applicant's spouse.

With regard to economic difficulties, the applicant's wife states that she is trying to obtain a job to support her children or government assistance, which she notes she does not believe is right to receive when "we can all be together and work for our family." See *Hardship Letter*, undated but stamped "Received December 3X, 2007." Partial tax returns were submitted for 2007 and 2008 (the first page of each only), which list the adjusted gross income for the applicant and his spouse in 2007 was $34,142 and for the spouse alone in 2008 as $10,429. See *Partial Tax Returns 2007 and 2008*. Past due notices were also submitted. See *Statements from* [redacted] and [redacted] Reduced income is a typical difficulty associated with removal of a family member. And while the partial tax returns show reduced income from 2007 to 2007, there is insufficient evidence in the record to establish that the applicant's wife is unable to support herself. As previously discussed, Ms. [redacted] asserts that the applicant's wife owns a home which she has rented to tenants in order to pay the mortgage. See *Psychological Evaluation*, dated February 7, 2009. [redacted] adds that the applicant's wife and her children have moved into a single room in the home of friends with whom there has been some conflict. *Id.* With regard to the applicant's wife seeking a job[redacted] notes that she now, "...has a good job as a sorter at UPS since last November." *Id.* Although the AAO acknowledges the challenges inherent in raising children in the absence of a partner, and recognizes that alternative living arrangements such as the one described are less than ideal, the applicant has not shown that the situation has elevated his spouse's difficulties to an extreme level.

The AAO acknowledges that separation from the applicant may have caused various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

With regard to relocation, the applicant's spouse states that it will be very hard for her "children to become adjusted to a life they are not used to." *Hardship Letter*, undated but stamped "Received December 3X, 2007." She does not assert any hardship to herself and does not explain the difficulty she anticipates for her children and the affect that difficulty may have on her. Thus, the AAO cannot make a determination that the applicant's children would experience hardship upon relocation to Mexico sufficient to constitute extreme hardship to the applicant's spouse.

[redacted] asserts that "the couple has examined the alternative of moving to Mexico." See *Psychological Evaluation*, dated February 7, 2009. She writes that the applicant's wife knows she would be unable to find a good job in Mexico, and that the applicant had a good job in the landscaping business in the U.S., and knows it will be almost impossible to find a job in Mexico that pays enough to maintain his family. *Id.* No evidence was submitted that shows that the applicant has been unable to secure employment in Mexico. [redacted] notes that the applicant has been living with his widowed mother in her home in Mexico, and helping her with the business previously operated by his father. *Id.* Counsel asserts that it is a small grocery store

and that the applicant is "barely able to support himself" working there. See *Appeal Brief*, undated. No evidence has been submitted that shows his expenses in Mexico, or that the income he generates through his family business is insufficient to meet his expenses and/or the expenses of his wife and children if they were to join him. Neither was any evidence submitted that shows whether the applicant has sought and been able/unable to find other work. [redacted] asserts also that the family would not have health insurance coverage in Mexico. *Id.* No evidence was submitted to support this assertion, nor was any evidence submitted to indicate that the applicant's wife or children suffer have any condition(s) that require out-of-the-ordinary medical care or access. The burden of proof is entirely upon the waiver applicant. Without documentary evidence to support the assertions of Counsel and the clinical counselor, the applicant's burden of proof will not be satisfied. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Nor do the unsupported assertions of [redacted] made outside of her area of expertise.

Finally, Counsel asserts that if the applicant's spouse relocated to live with her husband in Durango, Mexico, "both would be under the constant fear that they are exposed to random violence and may never be able to return to the U.S." *Appeal Brief*, undated. Country-conditions evidence was submitted and considered by the AAO. According to the State Department's most recent Travel Warning: "Between 2006 and 2010, the number of narcotics-related murders in the State of Durango increased dramatically. Several areas in the state have seen sharp increases in violence and remain volatile and unpredictable." *U.S. Department of State Travel Warning: Mexico*, dated April 22, 2011. Evidence was not submitted that shows whether the applicant lives in an affected area of Durango State, and no evidence was submitted that shows that the current conditions there have specifically impacted him. Thus, no evidence has been submitted that violence in Mexico would cause extreme hardship to the applicant's spouse.

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 his U.S. citizen spouse 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.

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.**