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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

H6

[redacted]

Date: OCT 21 2011 Office: MEXICO CITY, MEXICO FILE: [redacted]

IN RE: Applicant: [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)

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,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and 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 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 ten years of his last departure from the United States. The applicant is married to a United States citizen and the father of a United States citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse and child.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated May 19, 2009.

The applicant, through counsel, contends that United States Citizenship and Immigration Services (USCIS) "disregarded and distorted the evidence offered to demonstrate the hardship the applicant's spouse will suffer." *Attachment to Form I-290B*, filed June 10, 2009. Counsel claims that "[t]he appeal should be granted and the waiver approved because the applicant demonstrated that his wife will suffer extreme hardship if he is not allowed to re-enter the United States for ten years." *Id.*

The record includes, but is not limited to, attachment to Form I-290B, a statement from the applicant's wife, letters of support for the applicant and his wife in English and Spanish[1], a psychological evaluation for the applicant's wife, household bills, a medical bill, and mortgage documents. The entire record was reviewed and considered, with the exception of the Spanish language statement, in arriving at a decision on the appeal.

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

> (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

[1] Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As a letter of support for the applicant and his wife is in Spanish and is not accompanied by an English-language translation, the AAO will not consider it in this proceeding.

> within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .
>
> (iii) Exceptions.-
>
> (I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).
>
> . . . .
>
> (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 [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 the present case, the record indicates that the applicant entered the United States in August 1999 without inspection. In February 2008, the applicant departed the United States.

The applicant accrued unlawful presence from October 24, 2000, the date he turned eighteen (18) years old, until February 2008, when he departed the United States. The applicant is attempting to seek admission into the United States within ten years of his February 2008 departure from the United States. The applicant is, therefore, 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 more than one year and seeking admission within 10 years of his departure.

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 child 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 of Immigration Appeals (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 a statement dated February 26, 2008, the applicant's wife states "[i]t is impossible for [her] and for [her] child to move to Mexico." She claims that "[t]he change of lifestyle, [their] unprotected status, without counting on any job at all, no housing and no health insurance for any of [them] will cause [her]

extreme hardship." On appeal, counsel states the applicant's wife "has resided her entire life in the United States," she "has never resided in Mexico," and she "has no family members or relatives who reside in Mexico." Counsel claims that the applicant's wife wants to continue her education in the United States, and "[c]omparable education opportunities are not be [sic] available to" her in Mexico." In a psychological evaluation dated June 10, 2009, [redacted] states the applicant is employed in Mexico but he does not make enough to support his family, and if his family joined him in Mexico, they "would live in severe poverty." The applicant's wife states they could not pay their current bills in Mexico. Also, the applicant's wife states her daughter would lose "the health and future education benefits that any US citizen deserves." Counsel also states that the applicant's wife "is a care provider to the applicant's father who recently had a kidney transplant." The AAO notes the record does not contain any documentary evidence establishing that the applicant's father had a kidney transplant or that he requires any assistance from the applicant's wife. Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 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). However, the AAO notes the claims made regarding the difficulties the applicant's wife and child would face in relocating to Mexico.

[redacted] diagnosed the applicant's wife with major depressive disorder and an anxiety disorder. [redacted] states the applicant's wife also suffers from aches and pains. [redacted] also states the applicant's wife was prescribed an antidepressant and pain medication by her family doctor. The applicant's wife states her daughter "has been receiving her regular immunizations." Counsel states the applicant's child "suffers from nasolacrima which requires surgery, and exotropia which requires on going medical care and treatment." The AAO notes that the record does not contain any documentary evidence establishing that the applicant's daughter is suffering from any medical conditions, how serious those medical conditions are, or what treatment she is receiving or may require. Additionally, there is no evidence in the record that the applicant's daughter and wife cannot receive treatment for their psychological and medical conditions in Mexico or that they have to remain in the United States to receive treatment. Counsel states the applicant's wife "can afford to provide her child with the appropriate medical care in the United States." However, in Mexico, she "has no medical insurance, or other means, to pay for her daughter's medical expenses." The AAO notes the medical and mental health concerns for the applicant's wife and daughter.

The AAO acknowledges that the applicant's wife is a native and citizen of the United States and that she may experience some hardship in joining the applicant in Mexico. The AAO also notes that the applicant's wife may be suffering from some mental health issues; however, these issues appear to be due to her separation from the applicant. Further, there is no documentation in the record establishing that she cannot continue her therapy in Mexico or that she has to remain in the United States to receive therapy. The AAO acknowledges that the applicant's daughter may suffer some hardship in relocating to Mexico; however, the AAO finds that the applicant has not shown that hardship to his daughter will

elevate his wife's challenges to an extreme level. Further, the record does not contain documentary evidence, e.g., country conditions reports on Mexico, that demonstrate that the applicant's wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States. The AAO also notes that the record does not establish that the applicant's wife could not pursue higher education in Mexico. Therefore, based on the record before it, the AAO finds that, even considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Mexico.

The applicant's wife states that without the applicant, her reason for living is eliminated. As noted above, [redacted] diagnosed the applicant's wife with major depressive disorder and an anxiety disorder. [redacted] states her symptoms include, but are not limited to, insomnia, feelings of abandonment and isolation, irritability, loss of composure with her daughter, lack of appetite, feelings of constriction and helplessness, stomach pains and other gastrointestinal problems, crying, difficulties concentrating, and fatigue. [redacted] reports that the applicant's wife is also suffering from aches and pains. He states the applicant's wife is being treated by her family doctor who prescribed her medication for her depression and aches and pains. [redacted] reports that the applicant's wife "is not functioning well;" however, "she has her in-laws that ensure her safety and the safety of her baby." [redacted] states that when the applicant's wife appeared for her interview with him, she "appeared to be extremely sleep deprived, she had large bags under her eyes and she appeared to be disheveled. The baby also looked disheveled with soiled clothing. [The applicant's wife] seemed not to care about her appearance. She was not well groomed.... She seemed to be extremely overwhelmed and distressed." The AAO notes the mental health concerns for the applicant's wife.

Counsel claims that the applicant's wife "will suffer significant emotional and financial hardship" if the applicant's waiver is denied. He states that the applicant's "child suffers from two serious medical conditions," which she receives medical care for in the United States. As noted above, counsel states the applicant's child "suffers from nasolacrima which requires surgery, and exotropia which requires on going medical care and treatment." However, the AAO notes that no documentary evidence has been submitted establishing that the applicant's daughter suffers from any medical conditions. The applicant's wife states her child needs the applicant's "physical presence and close care." She claims that without the applicant, she "will be forced to devote more time to work instead of taking care of [her daughter]." The AAO acknowledges that the applicant's daughter may be suffering some hardship in being separated from the applicant; however, as noted above, the applicant's daughter is not a qualifying relative, and the applicant has not shown that hardship to his daughter will elevate his wife's challenges to an extreme level. [redacted] claims that the applicant's wife has been "functioning as a single parent since [the applicant's] departure." He states the applicant's wife is "experiencing extreme economic hardship," she relies "on handouts from her in-laws," and "she is economically destitute" without the applicant. Counsel states the applicant's wife has "significant debt," including a home that she and the applicant purchased with other family members. The AAO notes that the record does not establish that the applicant and his wife purchased a home with other family members. [redacted] reports that the applicant's wife is currently unemployed, and "[g]iven her psychiatric condition, she is in no shape or form to work at this juncture." As noted above, [redacted] indicates that the applicant is working in Mexico, but he does not make enough money to provide for his family. The AAO notes the applicant's wife's concerns.

The AAO acknowledges that the applicant's wife is experiencing emotional and financial issues due to her separation from the applicant. The AAO finds that when the applicant's wife's emotional and financial issues are considered in combination with the normal hardships that result from separation of a spouse, the applicant has established that his wife would experience extreme hardship if she remained in the United States in his absence.

Although the applicant has demonstrated that his spouse would experience extreme hardship if separated from the applicant, the AAO can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

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. *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.