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

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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DATE: APR 2 6 2012 Office: MEXICO CITY, MEXICO FILE: [redacted]

IN RE: [redacted]

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

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 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 (FOD), 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, the spouse of a U.S. citizen, and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 a period of more than one year, and seeking admission within 10 years of the date of his last departure. 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), in order to reside in the United States with his U.S. citizen spouse.

The FOD denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative. *See Decision of the Field Office Director*, dated January 25, 2010.

On appeal, the applicant submitted additional evidence for consideration. *See Form I-290B, Notice of Appeal or Motion*, dated February 25, 2010.

The evidence of record includes, but is not limited to: statements from the applicant and his spouse; medical documentation; copies of financial documents; letters from family and friends; articles about country conditions in Mexico; and copies of relationship and identification documents. The entire record 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.-
>
> > (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 within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record reflects that the applicant entered the United States without inspection in November 2005 and did not depart until April 2008. Accordingly, the AAO finds that the applicant was unlawfully present in the United States for more than one year and therefore, is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility. The applicant's qualifying relative is his spouse, who is a U.S. citizen.

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

> The Attorney General [now Secretary of Homeland Security] 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.

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 other family members can be considered only insofar as it results in hardship to a 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 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, 631-32 (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, "[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., In re 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

The applicant and his spouse state that they have health problems that require medical treatment in Mexico. The applicant had eye surgery due to problems caused by irritation from chemicals used in his agricultural work. One doctor recommends that he should not perform this type of work, however, he must because this type of employment is the principal activity where they live. He also has chronic tonsillitis and pharyngitis for which he is being medically treated. The applicant and his spouse state that they might not be able to fulfill their dreams of having children due to their infertility issues.

The applicant is concerned for the safety of his wife in Mexico; she does not want to go out and feels like a prisoner. Both refer to the applicant's wife's depression, for which she is receiving therapy and taking an antidepressant. She feels nervous and depressed in Mexico because she does not feel secure there. She describes her family ties to the United States. Her parents, siblings, aunts, and cousins live the United States, and she would like to come back to have their support.

The applicant's wife states that she moved to Mexico to be with the applicant. Upon returning to the United States, she was unable to find work and could not receive unemployment benefits because she voluntarily quit her previous job. She states that she sold her vehicle to support herself and to send money to the applicant. While in the United States, she lived with her aunt, but it was difficult without the income of the applicant and she returned to Mexico to be with him. She states that her medical treatment is expensive in Mexico, where she is a housewife and the applicant earns minimum wage, and she is unable to obtain the treatment she needs.

A statement from a treating physician confirms that the applicant and his spouse have infertility problems and received treatment twice in Mexico, however, discontinued the treatment due to "personal issues." A letter from a psychologist indicates that the applicant's wife is being treated for severe depression and anxiety, and the psychologist recommends that the couple relocate to the United States because the applicant's wife's family members are there. He recommends that the applicant's wife continue her treatment until she is better. Another treating physician states that the applicant's wife is being treated with antidepressants to reduce her anxiety. The physician states that the applicant's spouse feels more tense, stressed, nervous and worried when she is in Mexico. The applicant's physician confirms that the applicant is being treated for tonsillitis and pharyngitis caused by fertilizers used in greenhouses where he works. The applicant is taking medications to control his illness.

The record includes the applicant's spouse's 2007 and 2008 pay statements, copies of rental receipts in the United States, and bank account statements. According to the applicant's spouse, they were able to afford their rent and had a higher balance in their bank account when both were employed in the United States. Also in the record is a copy of the couple's 2007 tax return, which indicates their household income in 2007 was $[redacted] and receipts of money transfers the applicant sent to his mother while he was in the United States.

The record contains several letters from family and friends attesting to the applicant's good character. Also in the record are articles about crime in the Michoacan region where the applicant and his spouse live.

Having reviewed the preceding evidence, the AAO finds that the applicant's spouse would experience extreme hardship if the waiver application is denied and she remains in Mexico. In reaching this conclusion, we note that the applicant's spouse is experiencing emotional problems and feels tense, stressed, nervous, and worried in Mexico. The AAO further notes that the applicant's spouse has strong family ties in the United States and cannot benefit from their

support in Mexico. Furthermore, the applicant's spouse is being treated for severe depression and anxiety and her physician recommends her to return to the United States to be with her family. In addition, the applicant's spouse has medical conditions for which treatment is available in the United States. Moreover, the applicant's spouse feels nervous and depressed in Mexico because she does not feel secure there. The AAO also notes that the U.S. Department of State has issued a travel warning for Mexico, updated on February 8, 2012, reporting an increase in incidents of roadblocks by transnational criminal organizations in various parts of Mexico in which both local and expatriate communities have been victimized. Accordingly, the AAO concludes that the applicant's spouse is experiencing extreme hardship as a result of living in Mexico and being separated from her family in the United States.

The record, however, does not establish that the applicant's spouse would experience extreme hardship if she returns to the United States and separates from the applicant. The applicant and his spouse express financial concerns that would result from their separation. The record contains evidence that the applicant's spouse was employed in the United States before moving to Mexico to be with the applicant, but does not demonstrate that the applicant's spouse would be unable to find gainful employment if she returns to the United States. The record also lacks evidence regarding recent household income and expenses. The applicant states he earns a minimum wage in Mexico but provides no evidence regarding his monthly income and expenses. The bank account statements showing a lower account balance after his departure to Mexico are not sufficient to prove extreme hardship, nor do they demonstrate a household income that does not cover household expenses. Furthermore, the record indicates that the applicant is being treated for tonsillitis and pharyngitis, however, no evidence demonstrates his condition prevents him from performing his duties in his current job or he is unable to obtain a different job. The assertions of the applicant and his spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *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 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

We 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. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The applicant has not established statutory eligibility for a waiver of his inadmissibility under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to his qualifying family member if she lived in the United States, 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. *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.