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

U.S. Citizenship and Immigration Services

[redacted]

H4

DATE: MAY 15 2012 OFFICE: MEXICO CITY FILE: [redacted]

IN RE: [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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, 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 (INA or 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. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. citizen spouse. The applicant seeks a waiver of inadmissibility under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) in order to reside in the United States with his spouse.

In a decision dated March 8, 2010, the Field Office Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and the application for a waiver of inadmissibility was denied accordingly.

On appeal, the applicant does not contest his inadmissibility, but states that his spouse will in fact suffer from extreme hardship.

In support of the waiver application, the record includes, a brief from the applicant's former counsel, country conditions information concerning Mexico, letters from the applicant's spouse, documentation of the applicant's spouse's tax returns, documentation concerning the applicant's spouse's medical condition, letters of support from community members, biographical information for the applicant's spouse, 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 INA § 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States for one year or more.

Section 212(a)(9) of the Act provides:

> (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.
>
> ...

> (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 applicant reports that he initially entered the United States without inspection in February 1995 and remained in the United States unlawfully through June 2008. The applicant began accruing unlawful presence on April 1, 1997, the date of enactment of the unlawful presence provisions of the INA, and accrued unlawful presence until his departure in June 2008. As the period of unlawful presence accrued is over one year, 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 his departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under INA § 212(a)(9)(B)(v), as the spouse of a U.S. citizen. In order to qualify for this waiver, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his spouse. Hardship to the applicant will not be separately considered, except as it may affect the applicant's spouse. 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 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.

On appeal, the applicant's spouse states that she is suffering from financial hardship due to separation from the applicant. More specifically, the applicant's spouse states that "due to being alone" she cannot manage her business and will have to close it in 2010. She also states that she was in Texas at the time of the appeal and was unable to travel due to financial trouble. In support of that statement, the applicant's spouse submitted her tax returns from the year 2008. Those tax returns indicated that the applicant's spouse filed her tax returns as "single" and that she obtained an income of $1,014 from her business in 2008. The applicant departed the United States in June 2008 and tax returns for the year 2009 were not submitted in the record. The AAO notes that the appeal was filed on April 13, 2010, a few days before the 2009 tax deadline. A letter from the Robeson County, North Carolina Tax Administration dated February 27, 2009 states that the applicant and his spouse owed $667.89 to the country and that this notice was the first step in the foreclosure process. No additional information was submitted in the record to indicate if the

property in question was actually foreclosed. The record does not make clear why the applicant's spouse filed her tax returns as "single" nor does the record indicate the role that the applicant's spouse has played in assisting his spouse with the business, [redacted]. Employment information was provided for "[redacted]" but there is no indication what relevance that individual holds in regards to financial hardship to the applicant's spouse. There is also no documentation of the applicant's spouse's expenses and her inability to meet those in the record. Based on the limited information provided, it is not possible to determine the degree of financial hardship that the applicant's spouse is suffering. The applicant's spouse also states that the applicant provided her emotional support and assisted her to lose weight and care for her health. There is no indication in the record, however, that the applicant's spouse has been unable to care for her health in the applicant's absence. Although the AAO recognizes the significance of family separation as a hardship factor, and recognizes that the applicant's spouse is suffering hardship due to the applicant's inadmissibility, the applicant has not met his burden of proof to document that the hardship his spouse faces, when considered in the aggregate, is extreme in nature.

As to whether the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico to reside with the applicant, the applicant's spouse states that she would not be able to afford her medications in Mexico and that her entire family resides in the United States, including her children. The record contains documentation that the applicant's spouse underwent heart surgery in 2007 and suffers from Diabetes Mellitus Type II, Hypertension, and Hyperlipidemia. The AAO recognizes that the applicant's 54-year-old spouse has suffered from serious medical conditions, but the record does not demonstrate that she could not receive treatment for her conditions in Mexico. Additionally, the applicant's former counsel stated that the applicant's spouse was only able to work part-time due to her medical condition and that she will require another surgery in the future. No evidence was provided in the record to document either of those assertions. The applicant's spouse states that she would not be able to afford her medications in Mexico, but she has not provided any documentation regarding the prohibitive cost of those medications in Mexico or the applicant's spouse's inability to afford those medications. The country conditions reports in the record refer to the problems of crime and unemployment in Mexico, but in regards to medical care, the U.S. Department of State Mexico Country Specific Information states that "[a]dequate medical care can be found in major cities" and "[e]xcellent health facilities are available in Mexico City." The report states that emergency response may be below U.S. standards and that care in more remote areas is limited, but the applicant has not illustrated that his spouse would not be able to benefit from the care available in major cities in Mexico.

There is also no documentation in the record regarding the applicant's spouse's family ties in the United States. Additionally, no reason is provided to indicate why the applicant's spouse would not be able to maintain visits and contact with her family in the United States should she relocate to Mexico to reside with the applicant. 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). As a result, it is not possible to make the determination based on the evidence of record that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico.

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 qualifying relative as required under INA § 212(a)(9)(B)(v), of the Act. The record contains letters of support in regards to the applicant's moral character; however, as the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section INA § 212(a)(9)(B)(v), 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.