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

(b)(6)

[redacted]

Date: APR 0 8 2013

Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ)

[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 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 in accordance with the instructions on 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion. The motion will be granted, but the underlying application remains denied.

The applicant is a native and citizen of Mexico who entered the United States in February 2005 without inspection, and returned to Mexico in June 2007. She 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 her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. Citizen spouse and child.

The District Director denied the applicant's Form I-601, finding the applicant had failed to demonstrate extreme hardship to a qualifying relative. *Decision of the District Director*, dated March 4, 2008.

The applicant filed an appeal of the District Director's decision with the AAO. On September 2, 2010, the AAO dismissed the applicant's appeal, finding that the record did not establish that her qualifying relative would experience extreme hardship under section 212(a)(9)(B)(v) of the Act. *See AAO Decision,* September 2, 2010. On October 4, 2010, the applicant filed a motion to reopen and reconsider the AAO's decision, which was granted, but the application remained denied. *See AAO Decision on Motion,* September 20, 2012.

On the applicant's second motion, counsel submits a brief in support. Therein, counsel asserts the spouse cannot relocate to Mexico because his business and employment are here, and he has never lived there. Counsel moreover claims that the present separation is causing the spouse to experience emotional hardship.

The record in support of the applicant's motion includes, but is not limited to, counsel's briefs, a statement from the applicant's husband, letters of support, medical documents for the applicant's son, household and utility bills, tax documents, and photographs. 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. The AAO notes that some of the medical and utility documents are in Spanish, and are still not accompanied by English-language translations. As such, the AAO will not consider them in this proceeding. The entire record was reviewed and considered, with the exception of the Spanish-language documents, in arriving at a decision on the second motion.

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.

. . . .

(v) Waiver.-The [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.

The record reflects that the applicant entered the United States without inspection in February 2005, and returned to Mexico in June 2007. Inadmissibility is not contested on motion. The AAO therefore affirms that the applicant accrued more than one year of unlawful presence and is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act until June 2017. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

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 v. I.N.S.*, 138 F.3d 1292 (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.

Counsel contends in the brief that it has now been five years since the applicant and her spouse have lived in different countries, and that the spouse is feeling emotionally strained. Counsel indicates that the spouse worries about the applicant's and their son's safety and security, and that the spouse suffers knowing that he is missing milestones in his son's life. Counsel further asserts that travel to Mexico is taking a toll on the spouse, and that the spouse is planning on bringing his son to the United States to attend elementary school in the country.

Counsel moreover asserts on this second motion that, although the applicant's spouse speaks Spanish, he has never lived in Mexico, and cannot relocate there. Counsel explains that the spouse's only source of income is in the United States, and that he supports not only himself, the applicant, and their son, but also his brother and his parents. Counsel adds that the spouse has to send money for his son's expensive medical treatments. Counsel concludes that the applicant's spouse cannot leave employment and family security in the United States, in exchange for the uncertainties, unemployment, and unsatisfactory conditions of life in Mexico.

Although counsel submits a brief on motion, neither the applicant nor counsel has submitted additional supporting evidence on hardship experienced upon continued separation or on relocation to Mexico. 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 AAO noted in its decision on the applicant's first motion that the record lacked sufficient evidence to demonstrate that her spouse would experience extreme hardship upon relocation to Mexico. On this second motion, the record still does not contain evidence establishing that the applicant's spouse would be unable to find employment in Mexico, that he has no family ties there, or that he is unfamiliar with Mexican culture given his frequent visits. The record also lacks supporting documentation showing that the son has been unable to receive treatment for his medical conditions in Mexico. Without supporting evidence, The AAO cannot conclude that the applicant has met her burden of proof with respect to her assertions of hardship upon relocation to Mexico.

The AAO notes that relocation to Mexico would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

The record similarly lacks additional supporting evidence on whether the spouse would experience extreme hardship upon continued separation from the applicant. The applicant has not submitted any additional documentation on the financial or emotional impacts of separation, or the effect his visits to Mexico have had on the spouse's business. The applicant has moreover failed to submit evidence to demonstrate that his emotional difficulties upon separation rise above those experienced by other relatives of inadmissible aliens. Furthermore, the record still does not contain documentation demonstrating that the applicant's son, a U.S. Citizen, would not be able to reside in the United States, obtain medical treatment, and attend school without the applicant present. Again, without supporting evidence, the AAO can give limited weight to the applicant's and her spouse's assertions.

While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without her 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 her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of

the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for a 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, although the AAO grants the motion, the underlying application remains denied.

ORDER: The motion is granted, but the underlying application remains denied.