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U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: MAR 18 2013 Office: SAN FRANCISCO, CA FILE:

IN RE:

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:

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 Field Office Director, San Francisco, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 admission within 10 years of his last departure. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain in the United States with his spouse.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision,* dated April 11, 2012.[1]

On appeal, counsel asserts that the director erred in concluding that the applicant's qualifying relative would not suffer extreme hardship and submits additional hardship evidence for consideration. *See Form I-290B, Notice of Appeal or Motion*, dated May 7, 2012.

The evidence of record includes, but is not limited to: counsel's briefs; statements and letters from the applicant, his spouse, their family and friends; a psychological evaluation for the applicant's spouse; medical evidence for the applicant's mother-in-law; articles about breast cancer; financial evidence; family photographs; developmental evaluation materials for the applicant's sister-in-law's son; identification and relationship documents, and documents in Spanish.

8 C.F.R. § 103.2(b) states:

> (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.

As such, the Spanish-language documents without English translations cannot be considered in analyzing this case. However, the rest of the record was reviewed and all relevant evidence was considered in reaching a decision on the appeal.

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[1] The AAO notes that the director erroneously found the applicant inadmissible under section 212(a)(6)(B)(i)(II) of the Act but followed this finding by correctly quoting section 212(a)(9)(B)(i)(II) of the Act, which applies to the applicant. Furthermore, the director correctly quoted section 212(a)(9)(B)(v) as the applicable waiver clause but also erroneously referred to section 212(i) of the Act in the decision. Because the director correctly recounted the facts in the applicant's case and quoted the applicable sections of the Act, we find these errors harmless.

Section 212(a)(9) states in pertinent part:

> (B) Aliens Unlawfully Present.-
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> (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.
>
> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General [now Secretary of Homeland Security (Secretary)] or is present in the United States without being admitted or paroled.

The record reflects that on November 8, 2008, the applicant entered the United States with a B-2 nonimmigrant visa, which authorized him to remain in the United States until May 7, 2009. The applicant states that he remained in the United States until June 4, 2010. He reentered the United States on July 2, 2010 with his border crossing card. Counsel contends that the applicant's lawful entry on July 2, 2010 cures his previously accumulated unlawful presence. The AAO finds counsel's assertion unpersuasive, as she provides no legal authority to support her assertion. Based on the applicant's history, the AAO finds that the applicant accrued unlawful presence of more than one year, and because he is seeking admission within 10 years of his 2009 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> 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 . . . 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).

The record contains references to hardship the applicant's sister-in-law would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's extended family as factors to be considered in assessing extreme hardship. 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 hardships to the applicant's sister-in-law will not be separately considered, except as they may affect the applicant's 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, 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 his qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel states that the applicant's spouse is "entirely dependent" on the applicant for emotional and financial support. The applicant's spouse states that she has been depressed since the denial of the applicant's waiver. She states that her "stress is getting out of control" and she feels her "life is being destroyed." She states she "cannot live apart" from the applicant. The applicant submits a psychological evaluation of his spouse, in which [redacted] states that the applicant's spouse suffers from severe depression and anxiety. The applicant's spouse reported to [redacted] that she was having difficulty sleeping, focusing, and concentrating. [redacted] states the applicant's spouse's depression and stress "impact her ability to complete daily life tasks, including her ability to work." Though [redacted] concludes that the applicant's spouse's "judgment regarding decisions affecting her own well being is appropriate," [redacted] also found evidence of suicidal thoughts and behavior. [redacted] indicates that the applicant's spouse may "become suicidal to the point of needing to be hospitalized" and recommends medication and weekly psychotherapy to alleviate the applicant's spouse's depression.

Regarding her financial hardship, the applicant's spouse states that without the applicant, she would incur "deep" credit-card debt or need to request government assistance. The applicant's spouse is unemployed. The applicant is the family's sole income provider while his spouse pursues her degree in nursing. Evidence in the record shows that the applicant works at a restaurant, earning $8.20 per hour.

With respect to hardship that the applicant's spouse would experience if she were to relocate to Mexico, the applicant states that Mexico is "rocked by insecurity, violence and a bad economic situation." He also is concerned about availability of adequate health care for his spouse. The applicant submits a letter from his mother-in-law and medical documentation indicating that she was

diagnosed with breast cancer at age 48. The applicant's mother-in-law states that her sister also was diagnosed with breast cancer at age 45 and two of her aunts died of breast cancer at ages 48 and 50. The applicant is concerned that his spouse faces an increased risk of breast cancer based on her family history.

The applicant also submits letters from his sister-in-law and her husband, who state that the applicant's spouse provides strong emotional support for them in dealing with their autistic child. The applicant's sister-in-law lives in San Diego. She and the applicant's spouse talk on the phone daily.

Having reviewed the preceding evidence, the AAO finds that the applicant's spouse would experience extreme hardship if she separates from the applicant. In reaching this conclusion, we note that the applicant's spouse's emotional condition is fragile and she depends on the emotional support that the applicant provides. Her psychologist is concerned that she may need hospitalization if her depression continues. We further note that the applicant is the sole income provider and his spouse financially depends on him. Therefore, the AAO concludes, considering the evidence in the aggregate, the applicant's spouse would experience extreme hardship, should she separate from the applicant.

The record, however, does not establish that the applicant's spouse would experience extreme hardship if she relocates to Mexico. The AAO notes that the applicant's spouse is a native of Mexico who, according to the record, came to the United States in 2006, as an adult. We also note that her father and U.S. citizen mother currently live in Mexico. The record fails to provide documentary evidence demonstrating that the applicant's spouse would be unable to obtain employment in Mexico. Similarly, concerns regarding availability of adequate health care are unsupported. The assertions of the applicant 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)).

With respect to concerns regarding the applicant's spouse's family ties in the United States, the AAO notes that in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. Moreover, although the record reflects that the applicant's spouse provides emotional support for her sister whose son is autistic, it does not provide details concerning how the applicant's sister-in-law's hardship would cause hardship to the applicant's spouse, the only qualifying relative, should she separate from her sister.

With respect to the applicant's safety concerns, the record shows that the applicant's spouse is from Guadalajara. The AAO notes that the U.S. Department of State's travel warning for Mexico, updated

on November 20, 2012, indicates no travel recommendations against travel to Guadalajara. Similarly, the report states that there is no advisory in effect for Mexico City, the applicant's hometown. Therefore, the AAO concludes, considering the evidence in the aggregate, the hardship the applicant's spouse would experience, should she relocate, would not rise to the level of extreme.

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 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 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 relocates to Mexico, 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.