U.S. Department of Homeland Security
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

(b)(6)

DATE: MAR 18 2013 Office: CIUDAD JUAREZ (ANAHEIM) 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:

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 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, Ciudad Juarez, Mexico, 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 son of U.S. legal permanent resident parents 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 reside in the United States with his parents and siblings.

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 24, 2012.

On appeal, the applicant's father submits additional evidence for consideration.

The evidence of record includes, but is not limited to: statements from the applicant's father; medical documentation for the applicant's father, including medical bills; country-conditions information for Mexico; and relationship and identification documents.

Section 212(a)(9) states 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.
> >
> > (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 or is present in the United States without being admitted or paroled.
> >
> > (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).

The record reflects that the applicant entered the United States in May 2002 without inspection and remained in the United States until April 2011, when he voluntarily departed. The applicant was 15 years old when he entered the United States. He became 18 years old on August 12, 2004. The AAO finds that the applicant accrued unlawful presence from August 13, 2004, the day after his 18th birthday, until his departure in April 2011. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his 2011 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility.

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

> 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 . . . 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). Though both of the applicant's parents are his qualifying relatives, the evidence submitted primarily concerns hardship to his father.

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.

On appeal, the applicant's father states that in March 2010, he suffered a workplace injury affecting his foot and he could not walk, care for himself, or work for eight months. During that period the applicant cared for his father; he also financially supported him and his mother and siblings who still were in Mexico at the time. The applicant's father states that he still cannot "function like before"; he "limp[s]" and his foot is "constantly swollen and always in pain." Medical records indicate that on March 29, 2010, the applicant's father had surgery on his foot and his discharge instructions temporarily restricted his mobility and advised follow-up care. The record, however, is silent on the applicant's father's post-surgery progress.

With respect to financial hardship, the applicant's father states that his income alone is not sufficient to support his family and he needs the applicant's financial contribution. The applicant's mother does not work. The record contains two letters concerning the applicant's father's outstanding medical bills. The March 29, 2012 letter shows that the applicant's father owes $6,592. The March 12, 2012 letter indicates that his bill-payment program is monitored by a collection agency. He pays $20 on a monthly basis and his remaining balance is $993.

The applicant's father also raises safety concerns about living in Mexico. He states that one of his cousins was murdered by guerrillas, and he and the applicant's mother constantly worry about the applicant's well-being. He fears that the applicant would be targeted for robbery, murder, kidnapping or recruitment because of his young age and his ties to family in the United States. The applicant lives in a small town with his brother. Their grandfather is the only other relative in Mexico; however, he does not live near the applicant. The applicant's father states that he cannot move to Mexico because he needs "constant medical attention" and the closest hospital to his hometown is two and a half hours away.

The AAO concludes that the applicant has failed to demonstrate extreme hardship to his parents resulting from their separation. With the exception of two medical bills, the record lacks documentary evidence to corroborate claims of financial hardship. Furthermore, the applicant failed to submit financial evidence demonstrating his parents' total household income and expenses. The record also lacks documentary evidence demonstrating that he financially contributed to his parents' income while he was in the United States and how his absence causes financial hardship to his parents. Though the assertions of the applicant's father are relevant evidence and have been considered, 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)). Without supporting evidence, the AAO cannot determine whether the applicant's parents are experiencing financial hardship.

The record also lacks medical evidence corroborating his father's claim that he is physically unable to function as he did before his foot surgery. The record also does not indicate whether he

receives the assistance he needs for his daily activities from other family members. Moreover, the record is silent about the applicant's father's current employment and whether any physical limitations prevent him from performing his work duties.

With respect to the applicant's parents' emotional hardship, the AAO recognizes that separation from the applicant would be emotionally difficult for the applicant's parents and understand their concern for the applicant's safety. However, the AAO concludes that, considering the evidence in the aggregate, the record does not establish that the applicant's parents are experiencing extreme hardship resulting from their separation from the applicant.

The AAO finds that the applicant also has failed to demonstrate that his parents would experience extreme hardship if they join him in Mexico. We note that the applicant's parents are from Mexico. The record fails to provide documentary evidence to corroborate claims that the applicant's father would be unable to receive adequate health care in Mexico. Moreover, neither the applicant nor his parents make any other hardship claims, should they relocate to Mexico. Regarding the safety concerns that the applicant's father raises, the AAO notes that the U.S. Department of State has issued a travel warning for Mexico, updated on November 20, 2012, advising individuals to exercise caution when traveling in the state of San Luis Potosi where the applicant's hometown, Salitral, is located. Although this country-conditions evidence is of concern, it does not, in and of itself, establish extreme hardship. The AAO concludes that considering the evidence in the aggregate, the record does not establish that the applicant's spouse and mother would experience extreme hardship, should they relocate.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

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. 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.