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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

[redacted]

DATE: MAY 21 2013 Office: SAN SALVADOR (PANAMA CITY) FILE: [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 (the Act), 8 U.S.C. section 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, Panama City, Panama. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and the matter will be reexamined. The prior decision of the AAO will be affirmed.

The applicant is a native and citizen of Ecuador. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 admission within 10 years of her last departure. She is married to a United States citizen. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 29, 2010. The AAO found that the applicant's spouse would experience extreme hardship upon relocation to Ecuador; however, it concluded that there was insufficient evidence to distinguish the hardship impacts on the applicant's spouse due to separation. *AAO Decision*, dated December 8, 2012. The AAO dismissed the appeal accordingly.

On motion, counsel for the applicant asserts that the AAO misapplied the holding in *Matter of Cervantes-Gonzalez* and that the applicant's spouse will suffer due to the applicant's inadmissibility from the United States. *Form I-290B*, received January 24, 2013.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Counsel asserts that the AAO misapplied the holding in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), because the applicant's case has factors which demonstrate extreme hardship and factors relevant to hardship in the aggregate. As counsel has stated a reason for consideration and referred to precedent cases in asserting that the AAO's decision was incorrect based on evidence in the record at the time of the decision, the AAO will grant the motion to reconsider.

The record includes the following: previously submitted documentation: a statement from counsel; statements from the applicant and her spouse; medical documents related to medical tests administered to the applicant's spouse; a psychological assessment of the applicant's spouse by dated November 9, 2010; country conditions materials pertaining to Ecuador, including a report issued by the United States Department of State, internet articles on violence and crime in Ecuador and photographs of the living conditions for the applicant and their daughter; a statement from pertaining to the applicant's spouse, undated; a statement from pertaining to the applicant's spouse, undated; and a copy of

an apartment lease and other bills in the applicant's spouse's name. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
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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.
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> . . . .

The record indicates that the applicant entered the United States with a B-2 visa as a visitor for pleasure on January 14, 2004, but remained beyond her authorized period of stay until she departed on March 19, 2009. Therefore, the applicant was unlawfully present in the United States for over one year, and is now seeking admission within 10 years of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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, 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*, 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.

An examination of the record contradicts counsel's assertion that the AAO failed to consider various hardship factors, either separately or in the aggregate. Counsel explains on motion that there are factual distinctions between *Mattter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999), and the applicant's case. The AAO notes, however, that *Matter of Cervantes-Gonzalez* was not cited for its factual holdings, but for the guidance it provides on determining extreme hardship. In this case, counsel has not specifically listed any precedent decisions to support his interpretation that the AAO misapplied precedent decisions, and instead simply restates hardship factors on the applicant's spouse and family.

An examination of the AAO's decision reveals that the Chief did in fact address the hardship factors discussed by counsel and determined that the applicant's spouse would experience extreme hardship upon relocation. The AAO finds no basis to disturb its conclusion with regard to hardship due to relocation, and will therefore examine counsel's assertions regarding hardship due to separation.

Counsel has not submitted any additional evidence on motion, relating to a misapplication of law or USCIS policy or establishing that the decision was incorrect based on the evidence in the record at the time.

With regard to hardship due to separation, counsel asserts that the applicant has testified truthfully with regard to his heart condition, and that the AAO should give more weight to his testimony. 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)). In this case the Chief examined the evidence submitted with regard to medical claims by the applicant's spouse and found that the evidence was inconclusive with regard to any medical prognosis of the applicant's spouse. Counsel has not submitted any additional evidence to clarify this factor. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the AAO failed to consider the "extreme" medical condition of the applicant's daughter, residing in Ecuador with the applicant. The AAO observes that the applicant's daughter is not required to reside in Ecuador, and that if the applicant or her spouse truly consider it to be an extreme hardship on her then she could reside in the United States with the applicant's spouse. The Chief examined the evidence presented by the applicant and found that it was not sufficient to demonstrate that the applicant's daughter would not be able to receive medical treatment for her condition in Ecuador. Counsel has not submitted any additional documentation, thus, the AAO finds that the record fails to establish the applicant's daughter will experience impacts related to a medical condition which will result in a significant impact on the qualifying relative, who in this case lives in the United States.

Counsel further states on motion that the AAO failed to consider the applicant's daughter would be unable to attend ballet classes to build her ballet skills in Ecuador. As discussed above, the applicant's daughter was not required to relocate to Ecuador, and in any event being unable to take ballet classes in the United States does not constitute an uncommon impact, as any relative relocating abroad with an inadmissible relative would experience severance of community ties.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse may experience some emotional impact. This and other assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. 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, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted, the prior decision of the AAO is affirmed, and the application remains denied.