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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**

75

DATE: **OCT 12 2011**

OFFICE: CHICAGO, IL

FILE: [REDACTED]

IN RE:

APPLICANT: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B), and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois, 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 (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 his last departure from the United States. He was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen spouse.

The Field Office Director concluded the applicant had not demonstrated extreme hardship to his qualifying relative beyond the normal consequences of deportation and denied the application accordingly. *See Decision of Field Office Director* dated June 25, 2009.

On appeal, counsel for the applicant asserts the qualifying relative would in fact experience extreme hardship above and beyond the normal economic and social disruptions involved in the removal of a family member. *Brief in support of appeal*, July 24, 2009. Counsel explains one positive factor is the qualifying relative's long residence in the United States. *Id.* Counsel then states the "most important favorable factor to consider is the impact of family separation." *Id.* Counsel contends the financial hardship, as well as the qualifying relative's medical and psychological conditions, also contribute to a finding of extreme hardship. *Id.* In support, counsel submits the same exhibits which were included in the original I-601 waiver as well as the qualifying relative's medical records and a letter from a psychologist.

The record includes, but is not limited to, birth and marriage certificates, evidence of lawful permanent residence and U.S. Citizenship, an affidavit from the applicant's spouse, a letter from a church, a psychological evaluation, evidence of health insurance, a union bill, photographs, some evidence of monthly bills, medical records, articles on health conditions, and an article on unemployment in Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

(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).

....

(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 record reflects the applicant admitted under oath he entered the United States without inspection in April 2000 and left on December 25, 2004. As such he remained in the United States and accrued unlawful presence from the day he turned 18 years of age on July 4, 2000 until December 25, 2004. As such, the applicant has accrued more than one year of unlawful presence and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

After his departure on December 25, 2004, the applicant applied for and was granted a B-1/B-2 non-immigrant visitor's visa. The Field Office Director found he had failed to disclose his unlawful presence in the United States in his non-immigrant visa application. The applicant is therefore also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having procured a visa through fraud or misrepresentation of a material fact – namely, the years he spent residing in the United States. The applicant's qualifying relative in this case is his 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*, 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.

Counsel first contends the applicant’s spouse has “lived her entire life in the United States and has only briefly visited Mexico on vacation.” *Brief in support of appeal*, July 24, 2009. This extended length of time in the United States, in addition to the fact that the spouse “has no close family remaining in Mexico,” according to counsel, “weigh[s] heavily in favor of granting her husband’s waiver.” *Id.* The applicant’s spouse confirms: “[b]ecause I have lived my entire life in the United States, I am not familiar with Mexico. I believe I would have a very hard time adjusting to life in Mexico since I am accustomed to an American way of life.” *Declaration of applicant’s spouse*, May 11, 2009. She also describes her family ties in the United States: “[m]y parents [redacted] are both lawful permanent residents. My brother [redacted] are both United States citizens. My family and I are very close knit and only my distant, extended family members live in Mexico.” *Id.* Counsel then asserts “the most important favorable factor to consider is the impact of family separation. While [redacted] have a young marriage, it is built on a strong foundation of love, honesty, respect, and a strong desire to be together.” *Brief in support of appeal*, July 24, 2009. In support, the applicant’s spouse claims: [redacted] and I spend all of our free time together. We enjoy going out dancing, taking trips to visit family and friends, and going to shopping malls, restaurants, parks, and to church on Sundays.” *Declaration of applicant’s spouse*, May 11, 2009. A letter from [redacted] certifies [redacted] are parishioners here at St. Monica’s church. They and their family have attended on occasion Mass here and other parish events.” *Letter from [redacted]* April 15, 2009. The applicant submitted photographs as evidence of his life with his spouse.

Counsel then discusses the spouse's financial hardships. He explains the applicant "is currently employed in the concrete industry and earns roughly \$3,800.00 per month... With this salary, they are barely able to afford rent, car payment and insurance, food, utilities, and medical bills... Luckily for the couple [redacted] job offers health benefits..." *Brief in support of appeal*, July 24, 2009. The applicant's spouse confirms the applicant "works for [redacted] located in Huntley, Illinois where he makes about \$3,800.00 per month. Even though [redacted] earns good money, it is hard to make ends meet because [their] monthly expenses include rent of \$600.00, [their] car payment, car insurance, food, utilities, [her] medical bills and [redacted] union dues." *Declaration of applicant's spouse*, May 11, 2009. In support, the applicant submits some medical bills, a Laborer's International Union of North America bill for \$72.00, two bills from [redacted] copies of checks and bank statements, and a Dish Network bill for \$39.98. *See financial documents*. The applicant's spouse also explains she is "currently unemployed but [she] is responsible for maintaining and cleaning the house, doing the laundry, chopping, cooking, making [their] budget, and organizing and paying [their] bills on time. [The applicant] is the one who works and supports [the couple] financially." *Declaration of applicant's spouse*, May 11, 2009. If the applicant and his spouse were to relocate to Mexico, counsel asserts they "would not make nearly as much as they do in the United States. Here, unskilled labor of the type [redacted] performs can be handsomely rewarded, in Mexico jobs of that nature may net only \$50-\$80 per week." *Brief in support of appeal*, July 24, 2009. The applicant submits an article on unemployment in Mexico to support this assertion. *See Unemployment statistics don't tell the real story in Mexico, The Miami Herald*, June 11, 2005.

Lastly, counsel explains the applicant's spouse would suffer hardship due to her medical and psychological condition. He states that "her doctors show concern of polycystic ovarian syndrome." *Brief in support of appeal*, July 24, 2009. In support, the applicant's spouse corroborates: "I suffer from irregular periods that require me to have frequent checkups with my doctor to make sure I remain healthy and able to have children in the future. These doctor's appointments are paid for by my husband's health care insurance." *Declaration of applicant's spouse*, May 11, 2009. The applicant submits medical records as evidence of the medical condition, as well as an article on Polycystic Ovary Syndrome. *See medical records, see also Frequently Asked Questions, Polycystic Ovary Syndrome (PCOS)*, April 1, 2007. In addition to the medical condition, counsel states the applicant's spouse's "psychological well-being is definitely being affected by the issues that are transpiring... [redacted] is having issues of depression since her husband's immigration problems set in. [redacted] is currently diagnosed with an Adjustment Disorder and with a Depressed Mood." *Brief in support of appeal*, July 24, 2009. A letter from a licensed clinical psychologist, [redacted], was submitted. Therein, [redacted] states:

I first interviewed [redacted] on 07-01-09. She did appear to be depressed at that time, and it appears much of her depression is in response to the ongoing legal issues concerning her husband's ability to remain in the United States. Mrs. [redacted] reported to me that her husband had recently received a denial to his request to legally remain in the United States. At this time, I have diagnosed Mrs.

Navarro with an Adjustment Disorder with Depressed Mood. I have also recommended outpatient treatment to address her depression.

*Letter from Vicki A. Santos, Psy.D., July 3, 2009.* The applicant's spouse does not discuss her psychological conditions in her declaration. *Declaration of applicant's spouse, May 11, 2009.*

This one-page psychological evaluation lacks details on the specific hardship experienced by the applicant's spouse. Therefore, although the evaluation notes that the applicant's spouse is diagnosed with an "Adjustment Disorder with Depressed Mood," nothing therein shows that her emotional / psychological hardship goes beyond that normally experienced by family members of inadmissible aliens. *Letter from [REDACTED] Psy.D., July 3, 2009.*

The applicant has similarly failed to submit sufficient evidence on his spouse's medical conditions. Both counsel and the applicant's spouse claim her needs due to her medical conditions require the applicant's presence, and the health insurance obtained through his employer. In support of these assertions counsel submits copies of medical records for the applicant's spouse. The records consist of laboratory results and physician's "progress notes" for medical care from 2007 to 2009. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's spouse suffers from such a condition, or that suitable treatment is unavailable in Mexico. Moreover, the record contains copies of medical records, including handwritten progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's spouse. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed, or the nature and extent of any hardship the applicant's spouse would suffer as a result of the applicant's inadmissibility.

The applicant's spouse claims the applicant "works for [REDACTED] Inc., located in Huntley, Illinois where he makes about \$3,800.00 per month. Even though [REDACTED] earns good money, it is hard to make ends meet because [their] monthly expenses include rent of \$600.00, [their] car payment, car insurance, food, utilities, [her] medical bills and [REDACTED] union dues." *Declaration of applicant's spouse, May 11, 2009.* Although the applicant submits some evidence of financial obligations, there is insufficient evidence of the household income and expenses to support assertions of financial hardship. The applicant submits a 2005 article on employment in Mexico in support of counsel's claim that the applicant would be unable to support the family on income earned in Mexico; again, there is insufficient evidence on what the applicant's income in

the United States is.<sup>1</sup> Without details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The applicant's spouse states she has lived in the United States her entire life, she is unfamiliar with Mexico, and would have a hard time adjusting to life in Mexico. *Declaration of applicant's spouse*, May 11, 2009. 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 her 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, medical, emotional or other impacts of separation or relocation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant and his spouse are separated or the applicant and his spouse 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 U.S. Citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member 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 sections 212(a)(9)(B)(v) and 212(i) 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.

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<sup>1</sup> It is noted that any employment between the applicant's 2005 entry into the United States and grant of any employment authorization by USCIS is considered unlawful employment, as the applicant entered the United States in B-1/B-2 status. Moreover, although the applicant'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 Obaighbena*, 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).