U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, DC 20529-2090

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PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

H6

DATE: OCT 0 4 2011 OFFICE: CIUDAD JUAREZ 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)

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 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,

Ellen C. Johnson

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen spouse and child.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States and denied the application accordingly. *See Decision of Field Office Director* dated March 26, 2009.

On appeal, counsel for the applicant asserts "CIS erred in denying [the applicant's] I-601 waiver because his inadmissibility has resulted, and will continue to result in extreme hardship to his United States citizen wife." *Brief in support of appeal,* undated. Counsel explains the spouse's hardship goes beyond normal hardship because the separation has gone on for an extensive period of time, the applicant's spouse and child lost their health insurance, the spouse needs the applicant for raising their child, and the applicant's spouse suffers from financial and medical difficulties. *Id.* Counsel also asserts the applicant's spouse and their child cannot relocate to Mexico. *Id.*

The record includes, but is not limited to, a brief in support of the appeal, a letter from the applicant's spouse, a letter from a physician, photographs, documents related to a theft charge, copies of bills, and paystubs. 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.-
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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.
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> (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 entered the United States without inspection in 1999. Under oath, the applicant admitted to living in the United States from the date of his 1999 entry to October 2007. The record further reflects the applicant was born on September 13, 1982, and turned 18 years of age on September 13, 2000. As such, the applicant accrued unlawful presence from September 13, 2000, the date of his eighteenth birthday, through October 2007 when he returned to Mexico.[1] The applicant's qualifying relative in this case is his U.S. Citizen spouse.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor 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(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it 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

[1] The record also contains records of a 2007 Texas arrest for theft. It is noted that as the state's motion to dismiss the charge was granted by a criminal court judge, there is no conviction for immigration purposes.

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.

On appeal, counsel for the applicant asserts "CIS erred in denying [the applicant's] I-601 waiver because his inadmissibility has resulted, and will continue to result in extreme hardship to his United States citizen wife." *Brief in support of appeal,* undated. Counsel then describes the spouse's financial hardship due to separation from the applicant. As a result of the applicant's relocation to Mexico, counsel asserts the applicant's spouse and their child have "lost their medical insurance. They also lost the financial support that [redacted] provided to them. [redacted] has been struggling to cover all of the costs and expenses of raising Amely alone." *Id.* Counsel further states the applicant's spouse and their child are "currently living off of [redacted] income only." *Id.* In support, the applicant's spouse confirms she has to "leave [her] daughter in the care of other people for longer periods of time to work and even then, that is not enough to cover all the costs and expenses for [her] daughter and [herself]... [They] also lost [their] medical insurance because [the applicant] was the one that would provide it." *Letter from applicant's spouse,* May 19, 2009.[2] As evidence of expenses, the applicant submits a home loan statement, the first page of a checking account statement, medical bills, a Sam's club bill, energy and utility bills, a Dish Network bill, a home phone bill and a wireless phone bill. *See financial documents.* As evidence of income, the applicant submits a paystub for his spouse's employment at [redacted] Supermarkets, and a paystub for his employment at [redacted]. *See paystubs.*

Counsel also submits the applicant's spouse is currently being treated for "thyroid disease, specifically Hyperthyroidism." *Brief in support of appeal,* undated. In support, a physician confirms "that the patient [redacted] was administered an oral therapeutic dose of 131I in the form of sodium iodide, on the 22nd day of the present month and year, since she has the diagnosis of Hyperthyroidism resistant to medical treatment, by medical prescription from [redacted]" *Letter from* [redacted], December 31, 2007. Counsel asserts the applicant's spouse "is a qualifying relative whose health and mental well-being depend on the [applicant's] presence with her in the United States." *Brief in support of appeal,* undated. The applicant's spouse corroborates the family "need[s] here with [them their] support and strength. [She] need[s] [her] husband and [her] daughter needs her father." *Letter from applicant's spouse,* May 19, 2009.

Counsel further explains "although the hardship caused to children is not a statutory consideration, this hardship greatly weighs on both" the applicant and his spouse. *Brief in support of appeal,* undated. The applicant's spouse claims she has to "leave [her] daughter in the care of other people for longer periods of time to work," and consequently, counsel states "[redacted] is growing up without the love and support of both her mother and father." *See letter from applicant's spouse,* May 19, 2009, *see also brief in support of appeal,* undated.

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[2] The record also contains a letter in Spanish without an English translation. 8 C.F.R. § 103.2(b)(3) 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.

This letter is not accompanied by a full English translation; therefore it cannot be considered in adjudication of this appeal.

Lastly, counsel discusses the possibility of relocation to Mexico. With respect to the applicant's spouse and their child, counsel claims "it would be impossible for [her] to relocate to Mexico because of the lack of employment opportunities... [redacted] is currently undergoing treatment for the above medical condition and the resulting financial burden requires her ability to earn income. Moreover, relocating would also mean permanently uprooting Amely from the only home, culture, and language she has ever known; their support network, friends, and neighborhood, would also be taken away." *Brief in support of appeal,* undated. Counsel further asserts "Mexico does not offer the educational opportunities – or even necessities – that are available in the United States." *Id.* The applicant's spouse adds, "the town that he lives in lacks a lot of services and I do not think it is an appropriate place for the development of [her] daughter. [Her] desire is that [their child] live[s] in her country, learn her culture and her language but logically that cannot happen without her family." *Letter from applicant's spouse,* May 19, 2009.

The applicant submits monthly billing statements from phone, cable, retail, energy, and mortgage companies as evidence of expenses, and paystubs for the applicant, when he was working without authorization in the United States, and his spouse to show income. Despite these submissions, the record does not contain sufficient evidence of the spouse's or the applicant's household expenses to support assertions of financial hardship.[3] Similarly, although counsel and the applicant's spouse assert the applicant's employer provided health insurance and without the applicant the spouse and child are not covered, the record does not contain evidence on the status of health insurance coverage. The applicant further fails to provide any evidence on whether he would be able to contribute financially from a location outside the United States. Without sufficient 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 submits a letter from a physician explaining the applicant's spouse's medical condition. Therein, the physician confirms "she has the diagnosis of Hyperthyroidism resistant to medical treatment." *Letter from* [redacted] December 31, 2007. Counsel also asserts the applicant's spouse "is a qualifying relative whose health and mental well-being depend on the [applicant's] presence with her in the United States." *Brief in support of appeal,* undated. It is noted that the letter is from a physician in Mexico; as such, it confirms there are treatments available in Mexico. Nevertheless, the record lacks documentation from a medical services provider with details about the severity of the spouse's complete medical condition and how it affects her quality of life to allow an assessment of the spouse's medical needs and whether the applicant can assist with those needs. 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.

[3] It is noted that the applicant's spouse's net income appears to be sufficient to cover the monthly bills which were submitted.

In the brief, counsel alleges the applicant's spouse and their child cannot relocate to Mexico. The applicant's spouse adds, "the town that he lives in lacks a lot of services and I do not think it is an appropriate place for the development of [her] daughter. [Her] desire is that [their child] live[s] in her country, learn her culture and her language but logically that cannot happen without her family." *Letter from applicant's spouse,* May 19, 2009. The record lacks evidence to support these assertions. 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 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). Thus, the AAO finds there is insufficient evidence of extreme hardship upon relocation to Mexico.

Lastly, the applicant's spouse explains the family "need[s] here with [them their] support and strength. [She] need[s] [her] husband and [her] daughter needs her father." *Letter from applicant's spouse,* May 19, 2009. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases.

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 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 remains in Mexico without his 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 his U.S. Citizen spouse as required under section 212(a)(9)(B)(v) 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 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. 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.