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



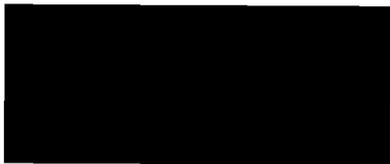
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DATE: **SEP 28 2011** OFFICE: CIUDAD JUAREZ FILE:

IN RE: APPLICANT:

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:



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, 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 her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. Citizen spouse.

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 December 23, 2008.

On appeal, counsel for the applicant first takes note of boilerplate language in the underlying decision. *See brief in support of appeal*, February 20, 2009. Counsel then takes exception to the Field Office Director's failure to discuss whether the applicant merits a waiver as a matter of discretion, stating "the issue is whether the applicant deserves a waiver as a matter of discretion and that is exactly what should have been decided and discussed by USCIS." *Id.* Counsel then lists and submits documents which support a finding of extreme hardship. *Id.*

The record includes, but is not limited to, a psychological evaluation, documents related to real estate, evidence of money transfers, copies of prescriptions, a medical bill, declarations by the applicant's spouse, and a physician's letter. The entire record was reviewed and considered in rendering a decision on the appeal.

As a preliminary matter, counsel asserts the Field Office Director erred by not evaluating whether the applicant merited a favorable exercise of discretion. *See brief in support of appeal*, February 20, 2009. Counsel fails to acknowledge that extreme hardship to a qualifying relative must be established before an analysis on discretion. In fact, extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). If an applicant has not established extreme hardship, as was the case with this applicant, the Field Office Director was correct in stating "no purpose would be served in discussing whether [she] merits a waiver as a matter of discretion." *See Decision of Field Office Director*, December 23, 2008.

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.

.....

(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.

In a sworn statement, the applicant admitted she entered without inspection on March 8, 2003 and remained in the United States until December 10, 2007. Therefore she has accrued more than one year of unlawful presence and requires a waiver under Section 212(a)(9)(B) of the Act to reside with her U.S. Citizen spouse, who is the applicant's qualifying relative.

The record contains references to hardship the applicant herself would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien 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(a)(9)(B)(v) of the Act, and hardship to the applicant herself 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 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.

In support of a finding of extreme hardship, the applicant's spouse submits he suffers from financial, psychological, and medical difficulties. *Letter from applicant's spouse*, January 10,

2008.¹ The applicant's spouse first discusses "serious financial problems," explaining "[a]lthough [he] currently hold[s] a full time job [i]t has been really hard for [him] to try to send money to [his] wife [i]n Mexico to support her 100%..." *Id.* In support, the applicant's spouse submits numerous money transfer receipts as evidence of money sent to the applicant in 2008. *See money transfer receipts.* The applicant's spouse mentions the "purchase [of a] house," and includes a quit claim deed as evidence of ownership transfer from only himself to himself and the applicant as joint tenants. *See quit claim deed, December 5, 2007.* With respect to the property, the record contains a notice of trustee's sale, dated November 7, 2008, as well as a forbearance agreement, dated November 5, 2008.

The applicant's spouse also discusses his psychological problems. He explains he was under significant stress when the applicant returned to Ciudad Juarez, Mexico for her immigration interview in 2007. *Letter from applicant's spouse, January 10, 2008.* The psychological evaluation goes into more detail about the applicant's spouse's mental state, concluding he "has failing physical health and posttraumatic stress disorder, with chronic depression and anxiety." *Psychological evaluation, December 6, 2007.* The clinical psychologist, who evaluated the applicant and his spouse during several appointments, describes the applicant's spouse's life history, emphasizing instances of heightened psychological duress. For instance, the evaluation discusses how the spouse's father's early death affected him, the fact that his mother was "physically and emotionally abusive," and how his two prior failed marriages impact his psychological health. *Id.* The psychologist concludes the applicant's spouse "evidenced a pattern of chronic depression with secondary features of anxiety... [and] a diagnosis of PTSD." *Id.* In addition, the evaluator notes the applicant's spouse has "cognitive and literacy limitations. Due to his virtual illiteracy, the written forms involved in this evaluation had to be read to him and his responses recorded for him. He could not perform simple arithmetic computations in s head. He had difficulty with time frames of important life events, denoting long term memory difficulties." *Id.*

The psychologist also claims he reviewed "medical records from [redacted] in Las Vegas dated December 6, 2003" and saw that emergency medical services were provided to the applicant's spouse on that date. *Id.* As further evidence of medical issues, the psychologist writes that the applicant's spouse "reported a number of physical conditions... [which include] a cardiac

¹ The record contains two handwritten letters in Spanish as well as the January 10, 2008 letter. 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.

These letters are not accompanied by a full English translation; therefore they cannot be considered in adjudication of this appeal.

condition and hypertension... chronic back pain and limited mobility... [that] his eyes tire easily [and h]e reported painful bunions in his feet.” *Id.* The applicant’s spouse also reported “chronic severe headaches... [and] severe sleep disturbance[s]” which the psychologist opines are caused by psychological issues and also serve as a “major indication of the severity of his chronic depression.” *Psychological evaluation*, December 6, 2007. As further evidence of his medical conditions, the applicant’s spouse submits a letter from a physician’s assistant, which confirms he “has a cardiac history where he had an angiogram and is currently treated with medicine for hypertension... [he] also has a long history of chronic low back pain. He typically tries to work through the pain, but to have his wife at his side during the difficult times would help him greatly.” *Letter from [REDACTED]* February 19, 2009.

The applicant submits copies of her prescriptions for glipizide ER, metformin, diltiazem, and lisinopril. *Copies of prescriptions*, January 2, 2008. Counsel for the applicant explains the applicant’s spouse “must purchase and send [these prescriptions] to the [applicant] in Mexico because these medications are extremely expensive in Mexico.” *Brief in support of appeal*, February 20, 2009. The applicant also submits a bill from [REDACTED] for services rendered in March 2006, which counsel explains is “related to treatment for her heart problems.” *See bill from [REDACTED]* January 3, 2007, *see also brief in support of appeal*, February 20, 2009.

The applicant submits copies of money transfer receipts to show receipt of money from her spouse during 2008. The applicant also submits documents related to foreclosure as further evidence of financial hardship. It is noted that the house was evidently transferred to the applicant and her spouse five days before she left the United States on December 10, 2007. *See quit claim deed*, December 5, 2007. The record also contains a November 5, 2008 executed forbearance agreement between the applicant’s spouse and the trustee as well as a November 7, 2008 notice of trustee’s sale scheduled for December 1, 2008. *See forbearance agreement*, November 5, 2008, *and notice of trustee’s sale*, November 7, 2008. Notwithstanding these submissions, there is no indication in the record that the property was in fact foreclosed upon and sold. Even if such documentation were provided, the record does not contain sufficient evidence of the spouse’s or the applicant’s household income and expenses to support assertions of financial hardship. The applicant further fails to provide any evidence regarding her own employment and earnings, and whether she would be able to contribute financially if she could join her spouse in the United States. 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 also asserts he has serious medical problems. A physician’s assistant confirms he “has a cardiac history where he had an angiogram and is currently treated with medicine for hypertension... [he] has a long his[tory] of chronic low back pain.” *Letter from [REDACTED]* February 19, 2009. Although the physician’s assistant discusses treatment for hypertension, the letter does not mention whether the applicant’s spouse requires treatment for his cardiac issues, or whether they have been resolved. In his report, the psychologist discusses the heart condition further, stating he reviewed medical records indicating the applicant’s spouse “received emergency medical services on December 6, 2003... [he] is currently being followed up

by [REDACTED]... who has prescribed similar medications for his cardiac condition and hypertension, Lisino-HCTZ and aspirin regimen.” *Psychological evaluation*, December 6, 2007. However, the applicant failed to submit the underlying documentation supporting the physician’s assistant’s conclusion. The record also lacks documentation from the treating medical services provider with details about the severity of the spouse’s complete medical condition and how it affects his 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.

The record contains references to other medical problems.² Again, the psychologist writes that the applicant’s spouse self-reports “his eyes tire easily [and h]e reported painful bunions in his feet.” *Id.* According to the evaluation, the applicant’s spouse also reported “chronic severe headaches... [and] severe sleep disturbance[s].” *Id.* These ailments were included in the psychological evaluation based upon the applicant’s spouse’s assertions alone, and are not supported by evidence in the record. Although these 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)).

In addition to discussing medical issues, the psychological evaluation goes into more detail about the applicant’s spouse’s mental state, concluding he “has failing physical health and posttraumatic stress disorder, with chronic depression and anxiety.” *Psychological evaluation*, December 6, 2007. The psychologist adds: [REDACTED] has special needs due to his failing health and PTSD, with depression and anxiety. With a stable marriage, he has been able to establish personal and emotional stability in his life without the benefit of formal psychological treatment. That is, his current personal and emotional stability is at least partially due to the caring and nurturing relationship he has with his wife, [REDACTED]. She has been supportive of him in accessing

² Assertions about the applicant’s own medical problems are only relevant to the analysis of extreme hardship to the extent they relate to the qualifying relative’s own hardship. In this vein, counsel asserts the applicant’s spouse “must purchase and send [prescriptions] to the [applicant] in Mexico because these medications are extremely expensive in Mexico.” *Brief in support of appeal*, February 20, 2009. However, there is no evidence in the record to support this assertion. 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).

needed health attention and fostering a healthy lifestyle.” *Id.* As noted in the Field Office Director’s decision, despite the severity of these conditions the evaluation does not indicate whether the applicant’s spouse should undergo any treatment. The evaluation further notes the applicant’s spouse “talked spontaneously several times about his nervousness and the fears he has related to his failing health, his wife’s health conditions, and his wife’s uncertain immigration status. In doing so, he evidenced features of anxiety.” *Id.* While the AAO acknowledges that the applicant’s spouse would face difficulty as a result of the applicant’s inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the emotional 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 either the financial, medical, or emotional impacts of separation on the applicant’s spouse, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant’s spouse remains separated from the applicant.

In the evaluation, the psychologist, not the applicant’s spouse, asserts he may suffer hardship upon relocation to Mexico. Therein, the psychologist opines “[b]ecause of their advanced ages and limited marketability, there is a good possibility that they may not be able to... have the financial stability to have ready access for [REDACTED] health and mental health needs in Mexico. They may not be able to afford the cost of such services.” *Psychological evaluation*, December 6, 2007. Despite this assertion, the record does not reflect that mental health treatment was recommended, nor does it reflect that [REDACTED] receives any such treatment. Additionally, this statement is not supported by evidence in the record. Accordingly, the AAO finds that there is insufficient evidence to find extreme hardship to the applicant’s U.S. Citizen spouse upon relocation 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 her 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.