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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**



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DATE: OFFICE: TEGUCIGALPA, HONDURAS  
SEP 28 2011

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:



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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras 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.

The Field Office Director concluded that the applicant failed to meet the burden of establishing that his qualifying relative will suffer extreme hardship upon the applicant's inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated June 16, 2009.

On appeal, counsel submits a brief in support. Therein, counsel contends the Field Office Director "dismisses the evidence of suffering in this case lightly." *Brief in support of appeal*, July 13, 2009. Counsel asserts the evidence submitted on the qualifying relative's hardship, which includes medical, financial, and some emotional hardship, constitutes extreme hardship. *Id.*

The record includes, but is not limited to, declarations of the applicant's spouse, a physician's letter, letters of support from family and friends, and a birth certificate. 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.

....

(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 indicates the applicant entered the United States without inspection in September 2001, and left on July 24, 2008 when he returned to Honduras. The applicant has therefore accrued more than one year of unlawful presence and requires a waiver under section 212(a)(9)(B)(v) of the Act. 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 for the applicant concedes the “denial of the waiver correctly recites the law regarding waivers.” *Brief in support of appeal*, July 13, 2009. Counsel asserts, though, that the Field Office Director “dismisses the evidence of suffering in this case lightly.” *Id.* Counsel then explains the applicant’s spouse has diabetes mellitus, and that although the letter from her physician may not “give a sense of the magnitude of [the help the applicant provides], but the doctor’s affirmation that this lady suffers from severe diabetes requiring five insulin shots daily gives strong support to a conclusion of extreme hardship.” *Id.* The letter from the applicant’s spouse’s physician confirms she “has Diabetes Mellitus requiring insulin injections up to five times per day. Her husband [REDACTED] assists her with her injection needs. It would be helpful if she stays with her husband who can assist her with her daily needs. If you have any further questions please feel free to contact me.” *Letter from [REDACTED]* October 3, 2008. The applicant’s spouse affirms she “require[s] constant visits to the doctor and much medication. [The applicant] has helped [her] so much during periods where [her] health has suffered.” *Declaration of applicant’s spouse*, October 7, 2008. Counsel concludes that the applicant has submitted sufficient evidence of “ongoing specialized treatment” as well as a “serious medical condition” which constitute “hardship beyond the ordinary.” *Brief in support of appeal*, July 13, 2009.

Counsel additionally claims that, contrary to the Field Office Director’s decision, the applicant’s spouse has submitted sufficient evidence of financial hardship. Counsel submits the applicant and his spouse are “an elderly couple [who live] close to the poverty line.” *Id.* Counsel then references a letter from the applicant’s employer, which “shows modest employment in a produce department” as well as the applicant’s spouse’s own declaration on her financial situation. *Id.*

Therein, the applicant's spouse confirms "financially [REDACTED] has been a tremendous help. We live modest[ly], but it does take all of his income to maintain [their] lifestyle. [They] don't have many luxuries, but what little that [they] do have [they] share. [She] need[s] his help financially." *Declaration of applicant's spouse*, October 7, 2008. The letter from the applicant's employer does not describe his income; however, the employer attests "to his work ethic; he is always punctual, works hard, and is a team player." *Letter from [REDACTED]* October 6, 2008. Other letters from friends and family confirm the applicant's good moral character. *See letters of support*.

The applicant states she suffers from emotional and psychological issues as a result of the separation from her husband. She claims after her "first husband's death [she] went through a lengthy period of depression and emotional instability... to think of a life without him puts [her] at risk of [going] back to a depressive state." *Declaration of applicant's spouse*, October 7, 2008.

Counsel lastly contends the applicant's spouse cannot relocate to Honduras. The applicant's spouse explains her "entire life is here in the United States. [She has] all of [her] children from [her] first marriage, fourteen grandchildren, and countless extended family. [Her] aspirations for the future are all tied to the United States thus it would not be possible for [her] to leave this country if this [waiver] is not approved. Basically a denial of this waiver could be an end to [their] marriage and a daily life full of sorrow." *Declaration of applicant's spouse*, October 7, 2008. Counsel adds the applicant's spouse "is from the Mexican culture that lives in the United States. The cultural differences to the Honduran culture would create additional fears; her future, her health, the separation from her grandchildren and children." *Brief in support of appeal*, July 13, 2009.

Counsel asserts the applicant suffers from extreme hardship due to her diabetes mellitus, yet he concedes the "words chosen by the doctor perhaps do not give a sense of the magnitude of" the help the applicant provides. *Brief in support of appeal*, July 13, 2009. Counsel is correct in that the letter from the physician fails to discuss how the applicant helps with his spouse's needs. The record also lacks an explanation 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.

Counsel and the applicant's spouse claim she suffers from financial hardship as a result of her separation from the applicant. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not

sufficient."). Despite this, the applicant fails to submit sufficient evidence of financial detriment to his spouse. The record does not contain sufficient evidence of the spouse's or the applicant's household expenses or income to support assertions of financial hardship.<sup>1</sup> The applicant further fails to provide any evidence regarding his own and his spouse's employment and earnings, and whether he would be able to contribute financially if he could join his 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 then explains after her "first husband's death [she] went through a lengthy period of depression and emotional instability... to think of a life without him puts [her] at risk of [going] back to a depressive state." *Declaration of applicant's spouse*, October 7, 2008. Although the applicant's spouse'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).

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 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 that the financial, medical, emotional or other impacts of separation on the applicant's spouse are 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 Honduras without his spouse.

Lastly, the applicant fails to show his spouse would suffer extreme hardship upon relocation to Honduras. Counsel's assertion of hardship due to the cultural differences between the applicant's spouse's culture and that of Honduras is unsupported by the record, and is wholly absent in the spouse's own declarations. The applicant's spouse does explain that her family and her entire life are in the United States which make it "not possible for [her] to leave this country." *Declaration of applicant's spouse*, October 7, 2008. Despite this assertion, separation from family members is an individual hardship factor which is considered common, not extreme. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA

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<sup>1</sup> The record does contain a letter from the applicant's employer, [REDACTED] This letter fails to indicate the applicant's income, or whether the offer of employment to the applicant remains open. This letter is also evidence of the applicant's unlawful employment in the United States.

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). As such, the AAO finds the applicant has not shown extreme hardship upon his spouse's relocation to Honduras.

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 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.