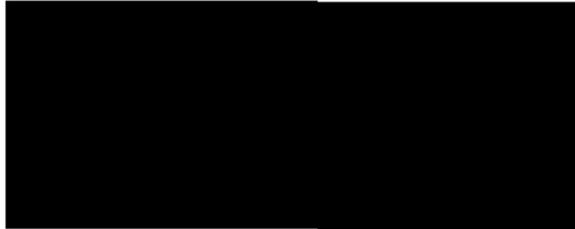


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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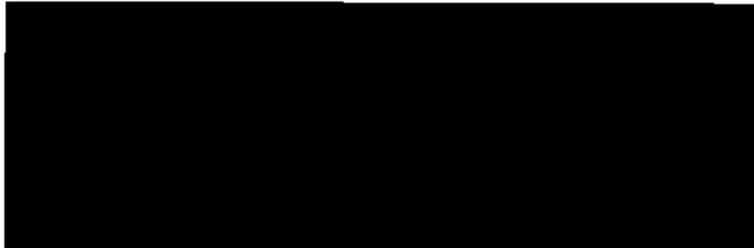
DATE: **AUG 28 2012** Office: MEXICO CITY (ANAHEIM, CA)

FILE: 

IN RE: 

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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico (Anaheim, California) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 admission within 10 years of his last departure. The applicant's parents are legal permanent residents of the United States, and the applicant is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his parents.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See District Director's Decision*, dated October 13, 2009.

On appeal, the applicant through his counsel submits additional hardship evidence for consideration. *See Form I-290B, Notice of Appeal or Motion*, received on November 5, 2009.

The evidence of record includes, but is not limited to: counsel's brief, statements from the applicant's parents, medical evidence, and a psychological evaluation for the applicant's father. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) states 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.

The record reflects that the applicant entered the United States in April 2006 without inspection and remained in the United States until December 2007, when he voluntarily departed the United States. Based on the applicant's history, the AAO finds that the applicant accrued unlawful presence of more than one year, and because he is seeking admission within 10 years of his 2007 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). In the instant case, the applicant's legal permanent resident parents are qualifying relatives.

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, 631-32 (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. "[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., In re 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.

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

In his 2009 brief, counsel states that if the applicant is not allowed to stay in the United States, his father will experience extreme emotional and financial hardship, and relocating to Mexico would

be "devastating" for the applicant's father. Counsel states that the family needs the applicant's emotional and financial support. Furthermore, counsel states that the applicant's family has no ties to Mexico, and "the financial impact of relocating . . . and potential cultural issues" would cause his father extreme hardship. Counsel also raises concerns for the applicant's father's health, should he relocate.

The applicant's father states that he depends on the applicant financially and emotionally. He states that he has hyperuricemia and kidney failure and gets anxiety attacks thinking about the possibility that the applicant may not be joining the family in the United States. He also states that he is the sole income provider for the family. Traveling to Mexico and maintaining two households would "financially kill" him. In addition, he has medical expenses. Separation from family and friends would also be extreme hardship for the applicant's father.

The applicant's mother is concerned about the applicant's safety in Mexico. She takes medications for diabetes, tension headaches, and high blood pressure; she also has a thyroid problem. Thinking about the violence and danger the applicant faces in Mexico affects her physical well-being. She feels "very anxious and cannot sleep well."

In her October 2009 initial psychological evaluation, [REDACTED] indicates that the applicant's father is experiencing post-traumatic stress disorder because he was a victim of a violent crime in Mexico in the mid-Eighties. His anxiety and depression have worsened since the applicant's immigrant-visa application was denied. The report also indicates that the applicant's father travels to Mexico three times a year to visit his family. [REDACTED] recommends psychological treatment for the applicant's father to reduce and manage his anxiety.

The AAO concludes that the applicant has failed to demonstrate extreme hardship to his parents resulting from their separation. The AAO acknowledges that the applicant and his parents have a loving relationship, and nothing in this decision should be interpreted as suggesting otherwise. However, regarding the applicant's father's financial concerns, the record lacks evidence demonstrating the family's household income and expenses, both in the United States and Mexico, and that the applicant's father financially supports the applicant. The applicant provided no evidence to corroborate statements that the applicant's father financially supports his adult children in the United States. Furthermore, the record lacks documentary evidence concerning the applicant's father's medical conditions, treatments, the type of assistance the applicant could provide for his daily care, and whether other family members are unable to provide such assistance for him.

Moreover, the medical evidence concerning the applicant's mother does not demonstrate that she is experiencing hardship without the applicant's assistance for her daily care, or that her separation from the applicant has caused her hardship. Although the applicant's mother claims that the applicant's absence affects her physical well-being, the record contains no documentary evidence supporting her claim. The prescriptions for medications she takes do not demonstrate that her

conditions are caused or negatively affected by the separation from the applicant. The record, in the absence of medical or psychological evaluations for the applicant's mother or other objective reports, does not demonstrate that the applicant's mother is experiencing significant medical or emotional hardship as a result of the separation.

The assertions of the applicant's parents are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *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 generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). The AAO concludes that the evidence submitted is insufficient to demonstrate that the applicant's absence has caused his parents extreme hardship.

The AAO finds that the applicant has also failed to demonstrate that his parents would experience extreme hardship if they join him in Mexico. We note that the applicant's parents are natives and citizens of Mexico; therefore, we find counsel's assertion that relocation would create potential cultural issues for them unsupported by the facts. The record also fails to provide documentary evidence to establish that the applicant and his parents would be unable to obtain employment in Mexico. Counsel raises health concerns for the applicant's father should he relocate; however, the record lacks evidence demonstrating that the applicant's father requires on-going medical treatments and that he would be unable to receive adequate health care in Mexico. Without documentary 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 Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We acknowledge that separation from other family members caused by relocation can be emotionally difficult; however, the AAO notes that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). Moreover, the record indicates that the applicant's father travels to Mexico regularly to visit his family. The AAO further notes that the U.S. Department of State has issued a travel warning for Mexico, updated on February 8, 2012, reporting an increase in incidents of roadblocks by transnational criminal organizations in various parts of Mexico in which both local and expatriate communities have been victimized. Although this country-conditions evidence is of concern, it does not, in and of itself, establish extreme hardship, and the record contains no other evidence to demonstrate that the applicant's parents would face danger in the location where the applicant lives.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or

inadmissibility to the level of extreme hardship. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

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.