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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: DEC 1 9 2012 OFFICE: SAN DIEGO, CALIFORNIA FILE: [redacted]

IN RE: Applicant: [redacted]

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:

[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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The record reflects that 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i), for having been unlawfully present in the United States for one year or more, and seeking admission within 10 years of his last departure from the United States. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest the finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife and child in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* dated July 28, 2011.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) erred in denying the waiver application as it failed to consider all of the relevant hardship evidence pertaining to the applicant's spouse and child as the applicant did not properly document his application. *See Notice of Appeal or Motion* (Form I-290B), dated August 19, 2011.

The record includes, but is not limited to: a brief from counsel; letters of support; identity, medical, employment, and financial documents; Internet articles; documents on conditions in Mexico; and photographs. 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.
>
> ...

> (v) Waiver.-The Attorney General [Secretary] 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 [Secretary] 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 [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection by U.S. immigration officials around December 2008 and remained until around September 2010, when he voluntarily departed to Mexico. The applicant accrued unlawful presence from December 2008 until September 2010; a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only demonstrated qualifying relative in this case. 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-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

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 of Immigration Appeals (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 U.S. 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; *In re 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 contends that the applicant's spouse has suffered extreme medical and economic hardship in the applicant's absence as: she has been diagnosed with clinical depression, cellulitis, colitis, and gastritis, which require frequent treatments and access to qualified physicians; she is unable to treat her cellulitis and gastritis with antibiotics as she is allergic, and thereby, her cellulitis is a serious and life threatening medical condition; she has a scarred and weakened uterus, which will require her to have specialized prenatal care during any future pregnancies; she bears the sole burden of raising their child alone; her income has decreased as a direct consequence of the forced separation of her family; she is unable to afford daycare and depends on her family members to watch her daughter so she can work as a medical assistant; her expenses exceed her income, resulting in debt and the ruination of her credit; it is difficult for her to save money to travel to Mexico; and her daughter is likely to grow-up maladjusted and exhibit antisocial behaviors without her father, the applicant. The applicant's spouse further discusses that: her depression and

gastritis were the direct result of the stress that she has been experiencing since the applicant returned to Mexico; she is taking prescription medication for her depression, and she needs the care and direction of her psychiatrist; her cellulitis appears every three years, and during her last outbreak, she had to go to the emergency room; and she has accumulated a large credit card debt, and that the applicant watched their daughter while she worked.

Although the applicant's spouse may experience some hardship in the applicant's absence, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record includes a letter from C. Patel, M.D., F.A.A.F.P., indicating that the applicant's spouse has been diagnosed with depression and was prescribed medication on August 3, 2011. However, the record does not include any discussion concerning the evaluative method used to make such a diagnosis or any indication that the applicant's participation in the treatment of his spouse's mental health condition would be advantageous. *See Medical Letter, Issued by* dated August 3, 2011; *see also Adult Progress Note*, dated August 31, 2011. Moreover, the record includes evidence of the applicant's spouse's medical history, indicating physical conditions related to abdominal pain, foot infections, rashes, heavy growth of yeast, pelvic discomfort, and cellulitis. However, some of the applicant's spouse's copies of medical records include hand-written progress notes, containing medical terminology and abbreviations that are not easily understood or are otherwise illegible. As the medical records are indiscernible, the AAO finds that the record does not contain a clear explanation of the current medical conditions and treatment of the applicant's spouse. Absent an explanation in plain language from the treating physician and mental health professional of the nature and severity of any physical and mental 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 or mental health condition or the treatment needed. Further, the record does not include any studies or research demonstrating the effect of the absence of a parent on a child as alleged by counsel. 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)). And, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

Additionally, the AAO notes that the record is unclear concerning the applicant's spouse's current employment status. The record includes a letter from Office Manager, indicating that the applicant's spouse has been employed with Newport Children's Medical Group in a fulltime capacity since August 28, 2006. *See Employment Letter*, dated March 8, 2010. However, the record also includes the applicant's spouse's daughter's medical record, indicating that the applicant's spouse is unemployed. *See HOAG Memorial Hospital Presbyterian Registration/Admission Record*, dated January 27, 2010. Further, the record does not include sufficient evidence of the applicant's spouse's current financial obligations. The record includes evidence that the applicant's spouse was in arrears for a financial debt owed to Wells Fargo Bank,

NA, totaling $5,076.71, and to Sprint with a settlement amount of $1,271.89, dated July 13, 2010 and February 25, 2010, respectively. However, the AAO notes that the most recent documentary evidence submitted in support of her financial obligations is a remittance to Mexico on November 7, 2010, dated almost nine months prior to the submission of the applicant's appeal. Moreover, the record does not include any evidence of labor or employment conditions in Mexico and the applicant's inability to assist in the maintenance of his and his spouse's households. Accordingly, the AAO cannot conclude that the record establishes that the applicant's spouse's financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's spouse's medical and economic hardship that she has experienced in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Counsel contends that the applicant's spouse would suffer extreme hardship upon relocating to Mexico to be with the applicant as: she has lived her entire life in the United States and does not have any ties to Mexico, even though she is of Mexican ancestry and speaks Spanish fluently; she would not receive the same level of medical care for her conditions; it was too expensive to obtain routine medical care and treatment when she lived in Mexico for two weeks with the applicant and their daughter; her daughter suffered from skin rashes as well as ear and throat irritations when they were in Mexico, and she did not suffer from these conditions prior to going to Mexico or after returning from there; her daughter suffers from a "suspicious skin lesion", which "requires close monitoring"; the applicant lives in his parents' home, which is already at full-capacity; there is little economic opportunity in Mexico, and its welfare system does not adequately provide for struggling families; and there is the proliferation of drug-related violence and the Mexican government's unwillingness or inability to deal with it.

The record is sufficient to establish that the applicant's spouse would suffer hardship if she were to relocate to Mexico. She has continuously resided in the United States and maintains close ties with her immediate, U.S. citizen family members. She would likely relocate to Patzcuaro, Michoacan, Mexico, where the applicant currently resides, and the U.S. Department of State has issued a Travel Warning for Michoacan, Mexico, stating: " ... defer non-essential travel to the state of Michoacán except the cities of Morelia and Lázaro Cardenas where you should exercise caution. Flying into Morelia and Lázaro Cardenas, or driving to Lázaro Cardenas via highway 200 from Zihuatanejo/Ixtapa, are the recommended methods of travel. Attacks on Mexican government officials, law enforcement and military personnel, and other incidents of [Transnational Criminal Organizations]-related violence, have occurred throughout Michoacán." *Travel Warning, Mexico*, issued November 20, 2012. The AAO notes that the record does not include specific evidence of her daughter's medical conditions while they were in Mexico or of specific medical and economic conditions there. Nevertheless, in the aggregate, the AAO finds that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the

scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. In re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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.