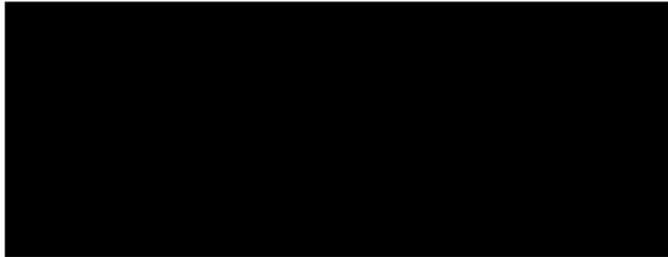




U.S. Citizenship  
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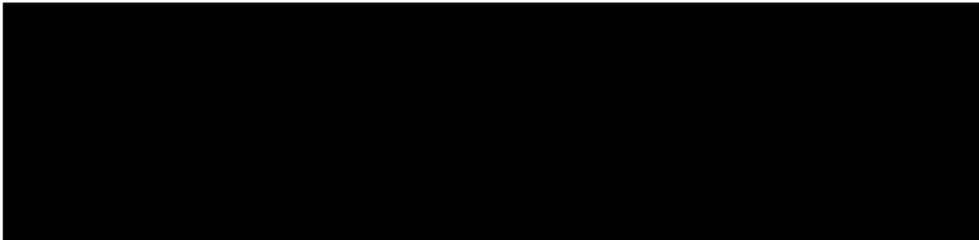
DATE: **DEC 20 2012** Office: MEXICO CITY (ANAHEIM)

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,

  
Ron Rosenberg

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Mexico City, Mexico, 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 is the spouse of a U.S. citizen and 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 U.S. citizen spouse and lawful permanent resident mother.

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 Field Office Director's Decision*, dated February 16, 2011. The Mexico City District Director subsequently denied the applicant's motion to reopen, because the applicant's evidence was not sufficient. *See District Director's Decision*, dated July 19, 2011. The applicant, through his counsel, appeals the waiver denial and the director's denial of the motion to reopen.

On appeal, counsel states that the director failed to consider the applicant's mother's hardship, who is a legal permanent resident of the United States and also the applicant's qualifying relative, in addition to his spouse. *See Counsel's Brief in Support of Appeal to AAO*, dated October 19, 2011.

The evidence of record includes, but is not limited to: counsel's brief; statements from the applicant, his spouse, mother, other family members, and friends; a psychiatric evaluation for the applicant's spouse; a letter from a medical facility; family photographs; relationship and identification documents; and documents in Spanish.

8 C.F.R. § 103.2(b) 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.

As such, the Spanish-language documents without English translations cannot be considered in analyzing this case. However, the rest of the record was reviewed and all relevant evidence was considered in reaching 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.

(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).

The record reflects that the applicant entered the United States in 1986 without inspection and remained in the United States until June 2006, when he voluntarily departed. At the time of his entry into the United States, the applicant was five years old. He became 18 years old on February 23, 1999. Based on the applicant's history, the AAO finds that the applicant accrued unlawful presence from February 24, 1999, the day after his 18<sup>th</sup> birthday, until his departure in June 2006. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his 2006 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).

The record contains references to hardship the applicant's brother would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's siblings as factors to be considered in assessing extreme hardship. In the present case, the applicant's spouse and mother are the only qualifying relatives for the waiver under section 212(a)(9)(B)(v) of the Act, and hardships to the applicant's brother will not be separately considered, except as they may affect the applicant's spouse and mother.

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.

On appeal, counsel states that the applicant has provided evidence demonstrating that he supports his lawful permanent resident mother financially, he resided with her in the United States, and she requires assistance with her daily care because of her chronic vertigo.

The applicant’s mother states that she has been experiencing financial, emotional, and psychological hardship since the applicant’s departure. The applicant’s spouse lives with her, and when the applicant was in the United States, he also lived with her and financially supported her. She co-owns her residence with her husband, and her husband contributes to their mortgage payments. The applicant’s mother is unemployed and she states that the applicant is unable to financially assist her from Mexico. She also states that she has been diagnosed with chronic vertigo. The applicant and his spouse take care of her, and the applicant drove her to her medical appointments. She further states that her depression has worsened and at times she experiences anxiety and panic attacks thinking about the applicant. She states that she cannot move to Mexico because of her age and her close family ties in the United States; her U.S. citizen son and her husband also live in California. She has not lived in Mexico since 1986.

The record contains a letter from [REDACTED] medical clinic, signed by an unidentified physician on March 15, 2011, which states that the applicant's mother has chronic vertigo and requires further testing and examination. The letter also indicates that the applicant's mother requires assistance with her daily activities.

The applicant's spouse states that her work has suffered because she takes extended time off to visit the applicant in Mexico. She states that she cannot pay the bills without the applicant. She is a cosmetologist; however, the record contains no details regarding her income. She believes that cosmetologists earn "very little pay" in Mexico. The applicant worked for an electrical company before moving to Tijuana, where he lived for a few months before moving back to Culiacan. The applicant does not provide information about his current employment status.

The applicant's spouse also states that she is afraid of being alone and their house is "too big." She has panic attacks and has thought about hurting herself, which frightens her. In a 2010 psychiatric evaluation, [REDACTED] diagnoses the applicant's spouse with "recurrent, moderate" major depressive disorder and panic attack disorder with agoraphobia. The applicant's spouse reports that she had at least two episodes of depressive symptoms with "passive suicide thought" in July 2009. She feels anxious, has weekly panic attacks, and avoids crowded places. [REDACTED] recommends individual and family therapy for the applicant's spouse on a regular basis to improve her relationship with her family and her coping skills. [REDACTED] also recommends relaxation techniques to reduce her anxiety and panic attacks and antidepressants if her symptoms do not improve.

The applicant's brother states that the applicant used to help out at the family restaurant and he counted on him when there were problems with the business. He needs knee surgery and needs the applicant to run his business while he recovers. He states that it is difficult to see everyone "working double time to help each other out because there is one less income." He further states that the applicant also helped in babysitting his daughter and took care of her as if she were his own daughter.

Letters from friends attest to the loving relationship between the applicant and his spouse. They also attest to the applicant's good character and his spouse's emotional hardship.

The AAO concludes that the applicant has failed to demonstrate extreme hardship to his spouse resulting from their separation. The AAO acknowledges that the applicant and his spouse have a loving relationship, and nothing in this decision should be interpreted as suggesting otherwise. We also note the applicant's spouse is experiencing emotional hardship; however, the record is silent on any therapy and treatment she may have received and the effects of such treatments.

With respect to the applicant's mother's emotional hardship, we note that the record lacks documentary evidence supporting her claims of depression, anxiety, and panic attacks. The letter from the medical clinic does not explain her limitations and the type of assistance she needs. The record also does not indicate whether she is able to receive the assistance she needs from other

family members. Moreover, the applicant does not explain how his brother's hardship affects the applicant's qualifying relatives.

Furthermore, the record lacks documentary evidence to corroborate claims of financial hardship. Though the assertions of the applicant's spouse and mother are relevant evidence and have been considered, 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 applicant failed to submit financial evidence demonstrating their household income and expenses and how his absence results in financial hardship for his spouse and mother. Moreover, the record lacks documentary evidence demonstrating that he contributed to his parents' mortgage payments. Without supporting evidence, the AAO cannot determine whether the applicant's spouse and mother are experiencing financial hardship. The AAO concludes that, considering the evidence in the aggregate, the record does not establish that the applicant's spouse and mother are experiencing extreme hardship resulting from their separation from the applicant.

The AAO finds that the applicant also has failed to demonstrate that his spouse and mother would experience extreme hardship if they join him in Mexico. We note that the record fails to provide documentary evidence to establish that the applicant's spouse is unable to obtain employment or receive adequate health care in Mexico. With respect to the applicant's mother's concerns regarding her family ties in the United States, the AAO notes that in *Matter of Pitch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. Moreover, the record does not provide details about the type of hardship the applicant's mother would experience because of her age. Regarding safety concerns, the AAO notes that the U.S. Department of State has issued a travel warning for Mexico, updated on February 8, 2012, reporting that since 2006, more homicides have occurred in Culiacan than in any other city in Mexico. It also reports that one of Mexico's most powerful transnational criminal organizations is based in the state of Sinaloa. Although this country-conditions evidence is of concern, it does not, in and of itself, establish extreme hardship, particularly given the applicant's demonstrated willingness to relocate within Mexico. The AAO concludes that considering the evidence in the aggregate, the record does not establish that the applicant's spouse and mother would experience extreme hardship, should they relocate.

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.