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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

H6

DATE: **JAN 25 2012** Office: CIUDAD JUAREZ, MEXICO

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section
212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 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 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,

George Papas for

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 record reflects that the applicant is a native and citizen of Mexico, the wife of a U.S. citizen, and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 a period of more than one year, and seeking admission within 10 years of the date of her last departure. The applicant seeks a waiver of inadmissibility 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.

The Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative. *Decision of the Field Office Director*, dated March 4, 2009.

On appeal, the applicant's counsel claims that the Field Office Director failed to properly weigh the hardship factors presented by the applicant. Counsel specifically asserts that the applicant's U.S. citizen spouse's severe mental and physical stress rise to the level of extreme hardship. *Notice of Appeal or Motion (Form I-290B)*, dated April 2, 2009.

The evidence of record includes, but is not limited to: statements from the applicant's husband; statements from a medical doctor and a psychologist relating to the applicant's husband; and statements from the applicant's children. The entire record was reviewed and all relevant evidence considered in reaching this decision.

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.

On Form I-601, Application for Waiver of Grounds of Inadmissibility, the applicant indicated that she entered the United States without inspection in January 2001, and did not depart until

June 2004, when she returned to Mexico to live with her daughters. Accordingly, the AAO finds that the applicant was unlawfully present in the United States for more than one year and therefore, is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

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 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.

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 present case, the record reflects that the applicant is married to a U.S. citizen. The applicant also claims two lawful permanent resident children, who were 15 and 20 years of age at the time the appeal was filed. The applicant's husband meets the definition of a qualifying relative. The applicant's children are not qualifying relatives for purposes of the waiver sought and, therefore, any hardship they might experience as a result of the applicant's inadmissibility will be considered only to the extent it results in hardship to 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 BIA 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 her inadmissibility.

On appeal, counsel asserts that [REDACTED] physical and mental health will continue to deteriorate without the support and care of the applicant. Counsel further asserts that the quality of [REDACTED] work has been steadily deteriorating and work referrals have decreased, which have had a direct effect on his income. Counsel also contends that [REDACTED] has never lived in Mexico and has no family members residing in Mexico. Counsel further claims that given “his deteriorating health and the growing dangers of traveling to the interior of Mexico[,]” it has become increasingly difficult for [REDACTED] to make trips to Mexico. Counsel also asserts that

having to care for both stepdaughters without the presence of the applicant is causing additional hardship to the applicant's spouse.

The applicant has submitted two affidavits from her spouse, dated November 2, 2007, and April 2, 2009. The AAO notes that the content of these affidavits are virtually identical with the exception of [REDACTED] age, and the number of years he and the applicant have known each other. In his affidavits, [REDACTED] states that since the applicant's return to Mexico, he has been visiting her regularly. In the beginning, he asserts, he used to visit her about once a month. However, since he relocated the applicant to Nuevo Laredo, he has been visiting her approximately every two weeks. [REDACTED], however, states that these trips have been taking a toll on him. He further claims that without his wife and her children, he feels very depressed and hopeless, and cannot sleep.

To establish the emotional impacts of separation on her spouse, the applicant has submitted a statement, dated March 19, 2009, from [REDACTED]

[REDACTED] e. In her letter, [REDACTED] states that [REDACTED] symptoms meet the criteria for Major Depressive Disorder and Generalized Anxiety Disorder. She also states that [REDACTED] high cholesterol and elevated blood pressure have developed since his separation from the applicant and that hypertension is worsened by chronic stress and anxiety. According to [REDACTED] letter, [REDACTED] owns a small auto repair shop and lives in an apartment above his garage. [REDACTED] also states that [REDACTED] is having difficulty concentrating on his work due to his depression and anxiety, and is worried that his inattention could create a safety situation for a customer. According to [REDACTED] [REDACTED] cannot afford to hire an additional mechanic to assist him and he believes that his stress and depression could destroy his livelihood and cause him to lose his own daughters' inheritance. [REDACTED] further states that [REDACTED] is deeply concerned about the applicant's 15 year-old daughter, [REDACTED], and that his worry about [REDACTED] is taking an additional toll on him. [REDACTED] contends that reuniting [REDACTED] and the applicant will help to alleviate [REDACTED] depression and that she has grave concerns about him if the applicant does not rejoin him.

The applicant also submitted a letter, dated April 1, 2009, from [REDACTED]. In his brief letter, [REDACTED] indicates that [REDACTED] is a long term patient of his and that [REDACTED] suffers from hypertension, chronic kidney disease, and osteoarthritis. He also states that [REDACTED] is declining in health and will be needing assistance with his daily activities.

The applicant also submitted two statements, dated February 26, 2007 and April 2, 2009, from her daughter [REDACTED]. In her statements, [REDACTED] states that [REDACTED] has been a father figure for her and has supported them in Mexico while supporting himself in the United States. [REDACTED] states that [REDACTED] had to cut back on expenses to be able to afford trips to Mexico. She asserts that without the applicant, [REDACTED] feels depressed. She further states that because [REDACTED] is distracted and worried, when she needs a ride, he picks her sister up from school rather than picking her up from work.

In addition, the applicant submitted a statement, dated April 2, 2009, from her younger daughter, [REDACTED]. Similarly, [REDACTED] states that [REDACTED] feels depressed without her mother and because he is distracted, he picks her up from school rather than picking her sister up from work.

The AAO has considered the statements from [REDACTED] and [REDACTED] however, we conclude that these statements do not provide detailed information about the severity of [REDACTED] condition; indicate what medications, if any, that [REDACTED] is taking; the extent to which his medical condition currently limit his daily activities; his prognosis regarding the decline in [REDACTED] health, and what type of assistance [REDACTED] will need in his daily life as a result of that decline. Counsel's assertion that [REDACTED] takes medications for hypertension and high cholesterol is not supported by documentary evidence. The record also indicates that [REDACTED] has been living with his stepdaughters; however, he does not provide any information regarding whether his stepdaughters are unable to assist him with his daily activities. Even though letters submitted by the medical doctor and the psychologist indicate that [REDACTED] has health issues, they do not provide us with sufficient information to reach any conclusions about the spouse's health or ability to care for himself. In the absence of supporting evidence, the AAO will not speculate on the state of [REDACTED] health and therefore concludes that the applicant has failed to establish that her spouse is experiencing extreme hardship due to separation.

In evaluating whether [REDACTED] is experiencing financial hardship, the AAO has reviewed all evidence in the record. The AAO notes that the record contains no documentary evidence of [REDACTED] pre- and post-separation earnings, tax returns, bank account information, his current expenses, debts, and liabilities. [REDACTED] asserts that [REDACTED] "worries that because of his stress and depression, he could destroy his livelihood, be unable to support his family and lose his own daughters' inheritance." However, the applicant submitted no financial records to show how [REDACTED] stress and depression are negatively affecting his earnings. The applicant's daughter, [REDACTED] states that [REDACTED] had to cut back on expenses in order to be able to afford his trips to Mexico. In addition, [REDACTED] asserts that he is supporting the applicant in Mexico; however, the applicant failed to submit any evidence of her husband's income, the cost of his trips to Mexico, and the amount of financial support that he is providing for her. In the absence of documentary evidence, we cannot reach a determination whether applicant's husband is experiencing any financial hardship.

The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *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)). Similarly, 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 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).

Counsel also asserts that traveling back and forth to visit the applicant is increasingly difficult for the applicant's spouse in light of his deteriorating health and the growing danger of traveling to the interior of Mexico. The AAO notes that the spouse has indicated that the applicant no longer lives in the interior of Mexico but in Nuevo Laredo, approximately 160 miles from San Antonio. The applicant's spouse states that these trips are taking a toll on him; however, he does not specify whether he is concerned for his safety while making these trips. The AAO further notes that U.S. Department of State, Travel Warnings indicate incidents of roadblocks by transitional criminal organizations in various parts of Nuevo Laredo in which armed gunmen carjack and rob unsuspecting drivers. The report also warns about entering the entertainment zone of Nuevo Laredo because of concerns about violent crime in that area. Country conditions evidence, however, does not, in and of itself, establish extreme hardship, and the record contains no other evidence to demonstrate that the applicant faces danger where she lives.

Counsel also asserts that [REDACTED] has the additional hardship of having to be both father and mother to the applicant's daughters. Counsel further asserts that [REDACTED] is despondent and has begun skipping school. Similarly, [REDACTED] asserts that [REDACTED] has begun skipping school and that [REDACTED] is deeply concerned about her. The record contains no supporting evidence that [REDACTED] is experiencing emotional problems or has been skipping school. Again, absent supporting documentation, these assertions cannot be given great weight. *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)). Similarly, 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 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).

The AAO acknowledges that the applicant's husband will experience hardship if he remains in the United States without the applicant, and nothing in this decision should be interpreted as suggesting otherwise. However, the evidence in the record is insufficient to demonstrate that the hardship of separation, when considered in the aggregate, will go beyond the hardship ordinarily associated with inadmissibility or removal.

The applicant has also failed to demonstrate that her spouse will suffer extreme hardship if he joins her in Mexico. Counsel states on appeal that the applicant's spouse has never lived in Mexico and has no family in Mexico, but counsel fails to state what hardships the applicant's spouse would experience as a result. Furthermore, the applicant's spouse has not asserted that he will experience hardship if he joins the applicant in Mexico. In the absence of clear assertions of hardship from the applicant, the AAO may not speculate as to what hardships the applicant's spouse would encounter

if he joins her in Mexico. We, must, therefore, conclude that the applicant has failed to establish that her spouse would experience extreme hardship upon relocation.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, when considered in the aggregate, rise beyond the common results of removal or inadmissibility. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether she 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 establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Because the applicant has not met that burden, the appeal will be dismissed.

ORDER: The appeal is dismissed.