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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
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U.S. Citizenship  
and Immigration  
Services

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DATE: **MAY 09 2012** OFFICE: MEXICO CITY 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 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,

Perry Rhew, Chief  
Administrative Appeals Office

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

The applicant is a native and 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 (INA or the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen father. The applicant seeks a waiver of inadmissibility (Form I-601) under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) in order to reside in the United States with her father and mother.

In a decision dated April 21, 2010, the Field Office Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and the application for a waiver of inadmissibility was denied accordingly.

On appeal, the applicant does not contest her inadmissibility, but states that her U.S. citizen father and her U.S. lawful permanent resident mother will in fact suffer from extreme hardship.

In support of the waiver application, the record includes, but is not limited to a letter from counsel for the applicant, letters from the applicant's parents, medical records in Spanish, a letter from the applicant in Spanish, a clinical assessment of the applicant's parents, limited financial records for the applicant's father, medical information on colon and bowel disorders, a news article on Guanajuato, documentation of the applicant's father's employment, and documentation of the applicant's traffic violations and immigration history in the United States.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under INA § 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States for one year or more.

Section 212(a)(9) of the Act provides:

(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.

(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 applicant reports that she initially entered the United States without inspection in March 2004 and remained in the United States unlawfully through August 2008, accruing unlawful presence the entire period. As the period of unlawful presence accrued is one year or more, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from her departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under INA § 212(a)(9)(B)(v), as the daughter of a U.S. citizen and the daughter of a lawful permanent resident. In order to qualify for this waiver, however, she must first prove that the refusal of her admission to the United States would result in extreme hardship to one of her parents. Hardship to the applicant or to the applicant's U.S. citizen children is only relevant under INA § 212(a)(9)(B)(v) to the extent that hardship to them is shown to cause hardship to a qualifying relative.

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 deportation, 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, 885 (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.

On appeal, counsel for the applicant states that the applicant’s parents will suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. In particular, counsel states that the applicant’s parents were both diagnosed with “depressive neurosis” as a result of the applicant’s inadmissibility. In support of that statement, counsel for the applicant submitted medical records in Spanish with no accompanying translation into English. C.F.R. § 103.2(b)(3) 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.

Absent an explanation in English and 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 by the applicant's parents. 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).

The record does contain a "clinical assessment of extreme hardship" prepared by [REDACTED] and [REDACTED] a Board Certified Chiropractic Orthopedist. This assessment states that the applicant's father and mother are experiencing symptoms of depressive and anxiety disorder. The assessment, dated October 24, 2008, recommends that the applicant's parents "schedule an appointment with a psychiatrist for evaluation of the need for medication if their symptoms...persist or worsen." In a letter dated April 25, 2009, the applicant's parents state that they are suffering from severe depression as a result of their separation from their daughter. At the same time, there is no documentation in the record that the applicant's parents followed the recommendation made in the assessment to seek a consultation with a psychiatrist. The applicant's parents state that they need their family together and they are "very afraid of any unexpected health conditions that may occur in the future." There is no indication in the record that either of the applicant's parents is suffering from any medical conditions at this time. The symptoms of depression and anxiety experienced by the applicant's parents, although relevant, have not been illustrated to affect their day to day functioning.

The applicant's father also states that he is suffering financial hardship as a result of his separation from his daughter. The record contains a W-2 Wage and Tax Statement for the applicant's father from 2009 illustrating that he worked at [REDACTED] and earned \$38,149.52 in 2009. The record does not contain a copy of the applicant's parent's tax returns; therefore it is not clear what the total household income is for the applicant's parents. Additionally, there is no documentation in the record indicating the applicant's parents' expenses. The record does indicate that the applicant's father has sent over \$800 to the applicant in Mexico and has also spent approximately \$200 in travel to Mexico, but no other documentation of expenses is included, such as rent or mortgage payments. In a letter dated July 16, 2009, the applicant's father states that he is very concerned for the medical condition of the applicant's daughter. He states that he is under stress, emotionally and financially, as a result of the need to care for his granddaughter. The record, however, contains conflicting information regarding who is caring for the applicant's two U.S. citizen children and whether those children are residing in Mexico with the applicant or in the United States with the applicant's parents. To determine the extent of hardship to either of the applicant's parents as a result of their caring for the applicant's children, documentary evidence clearly establishing who is caring for the children and the costs associated with that care are necessary. There is no documentation in English documenting that the applicant's father was responsible for paying for his granddaughter's medical care. The applicant has also provided no explanation or documentation to establish why the father of her children is unable to provide care or financial assistance for his children. Based on the information provided in the record, it is not

possible to determine the extent of financial hardship experienced by either of the applicant's parents. Although the applicant's parent's assertions have been taken into consideration, little weight can be afforded them in the absence of clarification on the exact nature of the claimed hardship and supporting evidence to document that 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 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)). As a result, based on the information provided, considered in the aggregate, there is no indication that the hardship suffered in this case is beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

The record does not document what hardship either of the applicant's parents would suffer if they were to relocate to Mexico. Although the record indicates that the applicant's parents have travelled to visit her in Mexico, there is no indication that they have considered relocating there to reside with the applicant. The applicant's parents state that they are concerned for the security situation in Mexico and the record illustrates that the applicant's father has had gainful employment in the United States, but there is no documentation to establish why he would be unable to support his family financially in Mexico. The AAO takes note of the U.S. Department of State Travel Warning for Mexico, dated February 8, 2012. In regards to the state of Guanajuato, where the applicant resides, the travel warning states that there is no advisory in effect. Although the level of crime in Mexico is cause for concern, and the record contains a news article of criminal activity in Guanajuato, there is no indication in the record of the particular risks that either of the applicant's parents would face if they were to relocate there to reside with their daughter. There is no documentation in the record of the applicant's parents' family ties in the United States; although they have stated that they have three children that are U.S. lawful permanent residents. As such, when the evidence is considered in the aggregate, it is not possible to determine that the level of hardship that either of the applicant's parents would face if they were to relocate to Mexico would be extreme.

Although the applicant's parents' concern over the applicant's immigration status, and the health of their grandchildren, is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v), of the Act, be above and beyond the normal, expected hardship involved in such cases. In this case, when the evidence is considered in the aggregate,

the AAO is unable to conclude that either of the applicant's parents would suffer extreme hardship.

The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under INA § 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 she merits a *waiver as a matter of discretion*.

In proceedings for an application for waiver of grounds of inadmissibility under section INA § 212(a)(9)(B)(v), 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.