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



U.S. Citizenship
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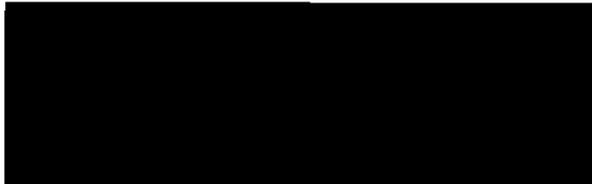
OFFICE: MEXICO CITY

FILE: 

IN RE: 

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

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 with the field office or service center that originally decided your case by filing a 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 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 (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 spouse. She seeks a waiver of inadmissibility (Form I-601) 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 her husband in the United States.

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, counsel for the applicant does not contest the applicant's inadmissibility, but states that the applicant's spouse will in fact suffer from extreme hardship.

In support of the waiver application, the record includes, briefs by counsel for the applicant, letters from the applicant's spouse, letters from family members of the applicant's spouse, a psychological assessment of the applicant's spouse, financial records for the applicant's spouse and the applicant's spouse's parents, phone and wire transfer records, copies of photographs, letters from members of the community, documentation regarding the country conditions in Mexico, and documentation of the applicant's immigration history.

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 section 212(a)(9)(B)(i)(II) of the Act 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 1994, at age 12, and remained in the United States unlawfully through December 2008. On April 5, 1999, the applicant turned 18 years old and began accruing unlawful presence under the Act. 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 section 212(a)(9)(B)(v) of the Act, as the spouse of a U.S. citizen. In order to qualify for this waiver, however, she must prove that the refusal of her admission to the United States would result in extreme hardship to her spouse. Hardship to the applicant will not be separately considered, except as it may affect the applicant's spouse. 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). Discretionary facts, such as the applicant's age at the time of her entry into the United States, her involvement in the community, and her lack of criminal record, only become relevant after she has demonstrated extreme hardship.

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, the applicant's spouse states that he is experiencing emotional, physical, and financial hardship as a result of the applicant's inadmissibility. Counsel for the applicant states that the applicant's spouse has relocated to Mexico to reside with the applicant and as a result is suffering from financial and emotional hardship. In regards to emotional hardship, the applicant's spouse states that he has experienced discrimination based on his religion – Jehovah's Witness – in Mexico and that he has experienced stress from adapting to a new culture, learning a new language, and being separated from his life in the United States including his congregation, friends, and family. The record contains a letter from Licensed Clinical Social Worker, [REDACTED] who conducted a two hour interview with applicant's spouse on March 25, 2009. It

appears from the letter that the applicant's spouse was present in the United States for the interview. Based on her interview, ██████████ concluded that should the applicant's spouse remain in Mexico with the applicant, he and his spouse "will face a precarious future with no source of income or prospects for adequate employment and no secure place to live." She also concludes that "their quality of life will diminish substantially" and the applicant's spouse "will not have access to psychiatric treatment and medicine that he really needs." In regards to the applicant's spouse's need for psychiatric treatment and medicine, ██████████ states in her report that she recommended that the applicant's spouse seek psychiatric help prior to returning to Mexico. The applicant's spouse describes his emotional pain and thoughts of suicide upon returning to Mexico in the record.

The AAO notes the seriousness of the applicant's spouse's description of his emotional state and also notes ██████████ recommendation that the applicant's spouse consult with a psychiatrist. Other family members have also stated in their letters in the record that the applicant's spouse has been suicidal. These are very serious concerns and significant conditions of health, including mental health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The AAO, however, is not in the position to diagnosis mental health disorders. Absent an explanation in plain language from a 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. The applicant's spouse also states that he is not able to find an English speaking mental health professional in Mexico, but no evidence has been provided to illustrate the unavailability of such care and the AAO notes the applicant's ability to return to the United States to seek the professional care recommended to him, even if only temporarily.

In regards to the financial hardship, the applicant's spouse states that he had to leave behind his business in the United States, a commercial cleaning business, where he had client contracts. In regards to the applicant's business, the only evidence submitted were the applicant's individual tax returns for the years 2006-2008. The tax returns do not include copies of schedules or worksheets, but indicate that the applicant reported a business income of \$9,295 in 2006, \$0 in 2007, and \$4,517 in 2008. In his unsigned and undated letter, the applicant's spouse states that he had various jobs outside of his cleaning business before his departure with the applicant to Mexico, and the record contains a letter from ██████████ stating that the applicant and his spouse worked with that company for a number of years. No evidence is provided in regards to the income obtained by the applicant's spouse from ██████████. The applicant's spouse states that prior to his departure, he and his wife's monthly income was \$300. Based on the information provided and the limited income from the claimed business, it is difficult to make any conclusions about the financial loss that the applicant's spouse has experienced by leaving his business in the United States.

In regards to the applicant's spouse's debt in the United States, the record demonstrates that the applicant's spouse received a letter from the Internal Revenue Service (IRS) dated March 19, 2010 indicating that he and the applicant owed \$5,614 to the IRS. The other evidence of debt submitted

into the record on appeal is dated from January 9, 2007 to July 13, 2009. Presumably if that debt was still in existence at the time of the appeal more recent evidence would have been available and would have been submitted. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. 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)). Counsel for the applicant states that the applicant's spouse will face financial ruin if he remains in Mexico; however, the only recent evidence of financial debt is the statement from the IRS in regards to \$5,614 in debt. 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 applicant's spouse states that he has been unable to find employment in Mexico and, as a result, his parents have been supporting him and the applicant. The record contains copies of Western Union money transfers for a period spanning from December 2008 to April 2010. The majority of the wire transfers are from [REDACTED] to the applicant and total, on average, over \$300.00 per month. Without documentation of the applicant's spouse's expenses in Mexico and his inability to meet those expenses, it is not possible to determine the degree of financial hardship that he is suffering. The applicant's spouse states that his parents are suffering from financial hardship in order to support him and his spouse, however, hardship to the applicant's spouse's parents is relevant only as it is shown to cause hardship to the applicant's spouse.

The AAO also notes that no evidence has been submitted to support the applicant's spouse's assertions that he faces discrimination in Mexico due to his religious faith. As stated above, 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. at 165. The applicant's spouse's mother also provides evidence that she is a member of the [REDACTED]. The AAO notes the applicant's spouse's ancestry. As a U.S. citizen, the applicant's spouse is a qualifying relative, which affords his spouse the opportunity to apply for a waiver of inadmissibility for her inadmissibility to the United States under section 212(a)(9)(B)(i)(II) of the Act. As set forth above, however, the law requires that she prove that the refusal of her admission to the United States would result in extreme hardship to her spouse.

The AAO takes note of the U.S. Department of State Travel Warning for Mexico, dated February 8, 2012, and the country conditions evidence in the record. The Travel Warning indicates that there is no advisory in effect for Guanajuato, the region of Mexico where the applicant and her spouse reside. The applicant's spouse has demonstrated that he has substantial family ties in the United States and that he is suffering emotional and financial hardship in Mexico, however, when

considered in the aggregate, the documentary evidence submitted does not illustrate that the hardship rises to the level of extreme hardship beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Counsel for the applicant states that the applicant's spouse would also suffer extreme hardship if he were to return to reside in the United States without the applicant. In particular, counsel states the applicant's spouse would suffer extreme emotional hardship and that the separation would destroy his marriage to the applicant. In support of that statement, counsel cites the letter written by Licensed Clinical Social Worker [REDACTED]. In her letter, [REDACTED] states that the loss of the relationship to the applicant "will have serious and possibly life-threatening consequences" for the applicant's spouse given his extensive history of depression. She does not, however, diagnose the applicant's spouse with depression, or conduct psychological testing, but rather her observations appear to be based on the information provided to her by the applicant's spouse. The AAO respects the opinion of [REDACTED] notes the seriousness of mental health conditions, and also notes that [REDACTED] recommendation that the applicant's spouse seek a psychiatric help. With the proper diagnosis and documentation of the applicant's spouse's mental health condition, the AAO would be in a position to make a determination regarding the degree of emotional hardship that the applicant's spouse would suffer upon separation from the applicant. We are not, however, in a position to make that determination based on the evidence in the record.

Although the applicant's spouse's concern over the applicant's immigration status 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 the applicant's spouse would suffer extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 her qualifying relative 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 she merits a waiver as a matter of discretion.

In proceedings for an 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.