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

(b)(6)

U.S. Citizenship and Immigration Services

Date: APR 0 9 2013 Office: PHOENIX, ARIZONA 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, Phoenix, Arizona. The matter 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 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 ten years of his last departure from the United States. The applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and children.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director,* dated March 14, 2012.

On appeal, the applicant through counsel asserts that his qualifying spouse and legal permanent resident children will suffer extreme hardship if he were to depart the United States. *See Notice of Appeal or Motion (Form I-290B)*, dated April 5, 2012.

The record contains the Application for Waiver of Grounds of Inadmissibility (Form I-601); Form I-290B; an appeal brief; relationship and identification documents for the applicant, qualifying spouse and their children; a death certificate for the applicant's father; letters from the qualifying spouse, applicant, his children, the mother of his children, his employer, his pastor, and a director at his daughter's school; financial documentation; a copy of the qualifying relative's prescription; a letter from a counseling group indicating that the qualifying spouse and her step-daughters are receiving counseling; proof of the applicant's financial support for his mother in Mexico; an approved Petition for Alien Relative (Form I-130) and an Application to Register Permanent Residence or Adjust Status (Form I-485). 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.-
>
> > (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.

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. The applicant's wife is the only 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 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, 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., 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.

The applicant entered the United States with a visitor's visa on August 2004 and returned to Mexico in August 2007. He re-entered the United States later that month as a non-immigrant visitor. He therefore accrued over one year of unlawful presence between 2004 and 2007 and is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 ten years of his departure from the United States. The applicant does not dispute his inadmissibility.

The applicant must first establish that his U.S. citizen spouse would suffer extreme hardship were she to live in the United States while the applicant resides in Mexico due to his inadmissibility. The applicant's attorney states that the qualifying spouse would suffer emotional hardship as a result of her separation from the applicant. The qualifying spouse states in a letter that the applicant provides her with "unconditional support" and that due to his possible departure she and the family are experiencing sleep problems. The record also includes a copy of the qualifying spouse's prescription for Prozac and a letter from the director of a counseling group stating that she and the applicant's daughters are receiving family therapy to treat emotional stress. Although the qualifying spouse may be suffering emotionally due to her separation from the applicant, the record fails to demonstrate in sufficient detail how the qualifying spouse's experiences amount to hardship beyond that commonly experienced by other separated families.

The applicant's attorney also asserts that the qualifying spouse would experience emotional hardship because she would become a single parent to her two step-daughters and son if the

applicant returned to Mexico. However, the record fails to address whether her step-daughters, natives of Mexico, could return to Mexico with the applicant or live with their mother in the United States if he were in Mexico.

In addition, the applicant's spouse contends in her letters that the applicant financially supports her and their children and that she is unemployed and cannot find work. Financial documentation in the record includes proof of a mortgage in the applicant's name, expenses, income-tax documents for the qualifying spouse, bank statements and a letter from the applicant's prior employer. Counsel also asserts that the applicant would be unable to earn comparable wages in Mexico and that his family there could not assist him financially. The record contains proof that he has sent money to his mother in Mexico. While the applicant's spouse may experience financial difficulties upon her separation from the applicant, the record does not contain objective documentation regarding the applicant's income in the United States, the extent of the family's financial responsibilities, or that he alone financially supports the family. A letter from the applicant's employer confirms that he was employed in the United States but does not indicate his salary. Further, the most recent financial documents reflecting the family's income are the qualifying spouse's 2010 tax documents indicating that she earned approximately $25,000 that year. While the assertions of the qualifying spouse and her step-daughters are relevant evidence and have been considered, 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 such, the evidence of the qualifying spouse's hardship upon separation, considered in the aggregate, including her emotional and financial hardships, fails to establish that she would experiencing extreme hardship if the applicant returned to Mexico and she were in the United States.

The applicant's attorney, applicant and qualifying spouse describe the emotional, educational and medical hardships that the applicant's children would face, whether separated from the applicant or as a result of their relocation to Mexico to be with him. Though the record includes statements that their hardship would affect the qualifying spouse, it lacks detail regarding how the children's hardships will affect her. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B) of the Act, and hardship to their children will not be separately considered, except as it may affect his spouse.

The applicant also failed to establish that his qualifying spouse would experience hardship upon relocation to Mexico. The applicant's attorney notes that the qualifying spouse and her son were born and have lived their entire lives in the United States. The applicant's attorney states that she has no family members in Mexico and states that they are all U.S. citizens or legal permanent residents. However, the record includes no evidence to corroborate claims regarding the qualifying spouse's family ties to the United States, other than to her step-daughters. Additionally, the applicant's attorney states that the qualifying spouse's living conditions in Mexico would "likely be that of extreme poverty" and that she and the applicant would be unable to afford their own housing, given the low wages in Mexico. The applicant, however, has not

provided evidence detailing his spouse's potential financial hardship upon relocation. Moreover, the applicant's attorney mentions that the applicant will live under "a constant threat of violence" in Mexico, yet the record does not include supporting documentation about the country conditions in Mexico or specify where the applicant would likely reside in Mexico and conditions there. Without documentary evidence to support these claims, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *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). Further, the record does not specifically address how the applicant's safety concerns regarding his life in Mexico would affect his spouse upon relocation to Mexico. The evidence in the record, considered in the aggregate, does not establish that the applicant's spouse would experience extreme hardship upon relocating to Mexico and the applicant has not met his burden of demonstrating that his qualifying spouse will suffer extreme hardship in the event that she relocates to Mexico.

In proceedings for applications for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.