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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 and Immigration Services

[redacted]

DATE: FEB 13 2013 OFFICE: MEXICO CITY 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, 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 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,

Ron Rosenberg, Acting 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 father. The applicant seeks a waiver of inadmissibility (Form I-601) 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 her father.

On June 4, 2012, the Field Office Director concluded that the applicant did not establish extreme hardship to a qualifying relative 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 U.S. citizen father would suffer from extreme hardship as a result of the applicant's inadmissibility.

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 father's physician, a letter from a community health center concerning the applicant's father, a letter from the applicant's father's employer, a letter from the applicant's father, a letter from the applicant, biographical information for the applicant and her father, letters from family and friends of the applicant and her father, and documentation of the applicant's 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 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-
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> ...

> (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.
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> ...
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> (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 June 2007 and remained in the United States unlawfully through March 2011. The applicant turned 18-years-old on November 28, 2007 and accrued unlawful presence from then until her departure. 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 inadmissibility under section 212(a)(9)(B)(v) of the Act, as the daughter of a U.S. citizen. In order to qualify for a waiver, the applicant must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. Hardship to the applicant is only relevant under section 212(a)(9)(B)(v) of the Act to the extent that hardship to them is shown to cause 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-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 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 1292, 1293 (9th Cir. 1998) (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 father is suffering from medical, financial, and physical issues as a result of the applicant's inadmissibility. Counsel also states that a "nearly identical" waiver was approved for the applicant's father's spouse. In regards to the hardship that the applicant's father is experiencing as a result of separation from his daughter, counsel states that the applicant's father has new physical and mental ailments, including depression, hypertension and asthma. He states that those ailments "coupled with [the applicant's father's] advancing age and laborious job indicate another factor for extreme hardship." The documentation concerning the applicant's father's physical and emotional health includes a letter

dated June 16, 2012 from stating that the applicant's father is being treated for hypertension, depression, and asthma. An additional letter, dated June 20, 2012, from Dr. indicates that the applicant's father consulted with Dr. regarding his depression. Dr. states that the applicant's father "is very upset and has clinical depression because of this situation." Additionally, medical records submitted by the applicant indicate that her father underwent cataract surgery in Mexico. The records also indicate that the applicant's father sought medical assistance in 2009 for his asthma. The AAO notes that significant conditions of 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 documents submitted indicate that the applicant is being treated for hypertension, depression, and asthma, but they do not indicate that the applicant's father requires the applicant's or anyone else's assistance. The record also fails to establish that other individuals are unable to care for the applicant's father, should it be proved that he requires special assistance. The AAO notes that counsel indicated that the applicant's father's spouse's waiver application was approved. There are also numerous letters in the record from friends and family of the applicant's father, but it is unclear why there are no other individuals suited to help care for the applicant's father should it be required. Although the applicant's father'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). 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).

In regards to financial hardship, an undated letter from the applicant's father's employer states that the applicant's father works full-time at where he cuts wood, sorts boards, and nails. There is no indication that the applicant's father has been unable to work as result of his medical condition, despite the applicant's statement that her father was not working due to medical issues. The applicant's father states that his debts are getting large and he is unable to support the applicant in Mexico as well as maintain his household in the United States. There is no documentation in the record of the applicant's father's support of the applicant in Mexico or the applicant's father's inability to provide for himself financially. The record indicates that the applicant's father had a past due bill for $416.79 to from November 24, 2010 and a balance of $244.96 due to on February 25, 2011 but no more recent information was submitted to indicate whether those accounts remained unpaid and how they are related to the applicant's father's separation from the applicant. Both of those bills are dated prior to the applicant's departure from the United States. No documentation was submitted to indicate the applicant's father's income or complete financial situation, such as copies of his federal tax returns. Additionally, there is no documentation that the applicant previously helped to support

herself or her father when she resided in the United States. 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 father is 59-years-old and became a naturalized U.S. citizen on February 18, 2010. The applicant is 23-years-old. According to the Form G-325A submitted by the applicant, she was not employed in the five years prior to submitting her application. Although the record makes clear that the applicant's father is concerned about his daughter in Mexico and wishes for her to join him in the United States, the record, when considered cumulatively, does not illustrate that the hardship that he is suffering as a result of separation from his daughter is beyond what is normally experienced by individuals dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

There is no documentation in the record to indicate what hardship, if any, the applicant's father would suffer if he were to return to his native Mexico to reside with the applicant. Although the record indicates that the applicant's father has numerous medical problems, there is no indication that those problems are not treatable in Mexico. In fact, the record indicates that the applicant's father traveled to Mexico to receive cataract surgery. 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 AAO takes note of the U.S. Department of State Travel Warning for Mexico, dated November 20, 2012. Although the level of crime in Mexico is cause for concern, there is no indication in the record of the particular risks that the applicant's father would face if he were to relocate there. When the evidence is considered in the aggregate, it is not possible to determine that the level of hardship that the applicant's father would face if he were to relocate to Mexico would be extreme.

Although the applicant's father'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 father 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 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.