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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 2 6 2013 OFFICE: TEGUCIGALPA 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 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 Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant is a native and citizen of Honduras, who entered the United States without admission in August 2001. He remained unlawfully in the country until March 16, 2011. The applicant was found to be inadmissible to the United States under 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 for more than one year and seeking readmission within ten years of his departure from the United States. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §1182(a)(9)(B)(v), in order to live in the United States with his U.S. lawful permanent resident spouse and his family.

In a decision dated April 19, 2012, the director concluded that the applicant had failed to establish a qualifying relative would experience extreme hardship if the applicant were denied admission into the United States. The waiver application was denied accordingly.

On appeal, the applicant asserts through counsel that the director failed to properly consider all factors in evaluating extreme hardship. The applicant also claims that his U.S. citizen son will experience extreme emotional and professional hardship if he is denied admission into the United States, and that his U.S. lawful permanent resident wife will experience extreme physical, emotional and financial hardship. In support of the assertions, counsel submits a brief, a psychological evaluation for the applicant's son, and a letter from the applicant's son.

The record also includes, but is not limited to, letters from the applicant's wife, children, and other family members; medical evidence; and documents establishing his family members' identity and immigration status. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (i) [A]ny alien (other than an alien lawfully admitted for permanent residence) who-
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> . . .
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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.

The record reflects the applicant was unlawfully present in the United States between August 2001 and March 2011. Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten

years. The applicant was unlawfully present in the United States for over one year and he has remained outside of the country for less than ten years. He is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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

> Waiver.-The Attorney General [now Secretary, Department of Homeland Security "Secretary"] 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 [Secretary] 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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez-Moralez,* 21 I&N Dec. 296 (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,* 22 I&N Dec. 560, 565 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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 v. I.N.S.,* 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.

The applicant's U.S. lawful permanent resident spouse is his qualifying relative under section 212(a)(9)(B)(v) of the Act. Counsel refers to hardship the applicant's U.S. citizen children and grandchildren would experience if the waiver application is denied. Congress did not include hardship to an alien's child or grandchild as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Hardship to the applicant's children and family members will therefore not be considered, except as it may affect the applicant's qualifying family member.

The applicant's wife states in a letter that she and the applicant have been together for 40 years; they are old; she is afraid the applicant could become sick in Honduras; and she is unable to sleep and has become depressed thinking of the applicant "alone and exposed to danger" in Honduras. She suffers from hypertension and high cholesterol aggravated by her separation from the applicant, and she states it is "very heartbreaking" when their children and grandchildren ask her when the applicant will return.

Counsel asserts in a brief that due to separation from the applicant, the applicant's wife's physical health has deteriorated; "she has developed high blood pressure and rheumatoid arthritis, and suffers from depression, mood swings, sadness, anxiety and sleep deprivation." Counsel also claims that the applicant's wife has been unable to pay for her living expenses and now lives with their oldest daughter.

Medical evidence reflects the applicant's wife has been a medical clinic patient since 2008 and that she is under treatment for high blood pressure, high cholesterol, and rheumatoid arthritis. A certified physician's assistant states the applicant's wife's separation from the applicant has "exacerbated" her symptoms, making them "challenging to control"; she has developed a "depressive state" causing "crying, sadness, anxiety and sleep deprivation;" and that her conditions make it difficult to focus at work and perform necessary tasks at home.

Letters from family members reflect concern for the applicant's health and safety in Honduras, and attest to the applicant's wife's depression and to the applicant's good character.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant is denied admission into the country and she remains in the United States. Medical evidence reflects the applicant's wife began treatment for her health conditions several years before the applicant departed to Honduras, and the evidence does not describe the severity of the applicant's wife's health conditions or how her conditions have been "exacerbated" since the applicant's departure. In addition, although the medical letter states the applicant's wife has developed a "depressive state" due to her separation from the applicant, the value of this conclusion is diminished in that no evidence demonstrates the expertise of the evaluator in the field of mental health; the record fails to establish the evaluator independently verified the information provided by the applicant's wife; no evidence indicates the applicant's wife has an ongoing patient-doctor relationship with a mental health professional; and the record contains no evidence that a treatment plan for the conditions noted in the medical letter has been prescribed or followed. The evidence thus fails to demonstrate that his wife would experience emotional hardship beyond that normally experienced upon inadmissibility or removal of a family member if she remained in the United States.

The record additionally lacks documentary evidence to corroborate assertions by counsel that the applicant's wife would experience financial hardship if she remained in the United States without the applicant. Although counsel'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. *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)).

The AAO also finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience extreme hardship if she moved to Honduras to be with the applicant. Although assertions were made regarding hardship the applicant would experience in Honduras, no claims were made with regard to hardship that the applicant's wife would face if she moved to Honduras. The applicant therefore failed to establish his wife would experience hardship beyond that normally experienced upon inadmissibility or removal if she moved to Honduras.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. *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.