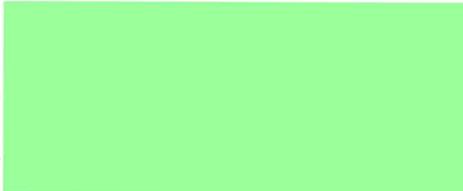
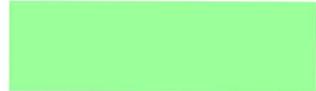




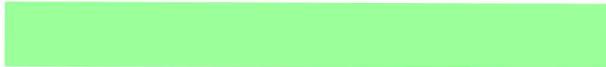
(b)(6)



DATE: **FEB 26 2013** OFFICE: TEGUCIGALPA, HONDURAS



IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the 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 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, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras 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 more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. Citizen spouse.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative given her inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated July 3, 2012.

On appeal, counsel submits a brief in support, a statement from the applicant's spouse, a psychological evaluation, a marriage and a naturalization certificate, medical records, and household bills. In the brief, counsel contends that the applicant's spouse suffers from limited vision and other medical problems, and cannot function well without the applicant present to assist him with his daily needs as well as his framing business. Counsel additionally asserts the spouse cannot return to Honduras because medical facilities there are insufficient for the spouse's needs.

The record includes, but is not limited to, the documents listed above, other statements from the applicant's spouse, medical and financial records, other applications and petitions, as well as evidence of birth, marriage, residence, and citizenship. 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the

Attorney General or is present in the United States without being admitted or paroled.

.....

(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 record reflects that the applicant entered the United States without inspection in March 2003, and returned to Honduras in July 2011. Inadmissibility is not contested on appeal. The AAO therefore finds that the applicant accrued more than one year of unlawful presence, from March 2003 to July 2011, and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

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 v. I.N.S.*, 138 F.3d 1292 (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 spouse contends that he has a multitude of medical problems, including diabetes, high blood pressure, cholesterol issues, and gastritis. The spouse asserts that without the applicant present to cook healthy food for him, he is forgetful and sometimes eats unhealthy meals. He explains that the applicant is essential for his physical and mental health. The spouse adds that he suffers from a detached retina in his right eye, which makes some tasks in his life frustrating and difficult. He states that the applicant helps out wherever she can, and helps with his small framing business. Counsel contends the applicant’s spouse is half blind, has limited vision, and has consequently had trouble with his framing business. Medical records are submitted in support, as is a letter from Dr. [REDACTED] the spouse’s physician. Therein, Dr. [REDACTED] indicates the spouse has been diagnosed with diabetes mellitus, hypertension, and high cholesterol. The spouse additionally states that he experiences low mood, a loss of energy, and he has been depressed due to the applicant’s absence and worrying about her safety in Honduras. A clinical pastoral consultant opines in a letter that the spouse is lonely, misses his wife, and displays symptoms of anxiety and hopelessness. Household bills, documentation on the small business, as well as money transfer receipts are submitted in support of assertions on financial hardship.

The spouse asserts he does not want to start over in Honduras, as he has been in the framing business for approximately three years in the United States, and he is no longer a young man. The

spouse claims in another statement that security in Honduras is very bad, and he and the applicant cannot survive there in the same manner they can here. Counsel contends the spouse would experience hardship due to his medical conditions in Honduras because the medical facilities in that country are poor.

The record contains contradicting evidence on the spouse's medical condition. Counsel asserts that the spouse is half blind and suffers from limited vision. However, the medical records submitted on appeal indicate that the spouse had surgery for his detached retina in 2009, and a progress note dated July 18, 2012 states that the spouse has no blurred vision, no eye discharge, and no itchiness. The spouse's physician establishes in a letter that the spouse has been diagnosed with diabetes, hypertension, and high cholesterol. The spouse's claim, though, that he eats unhealthy foods and is forgetful about his diet without the applicant present, is contradicted by the same progress note, which indicates that, during a time period when the applicant is in Honduras, the spouse is over 75 percent adherent to his prescribed diet and medications. Given these inconsistencies, the AAO is unable to determine what medical hardship, if any, the applicant's spouse faces without the applicant.

The record contains evidence showing that the applicant's spouse has financial obligations which he sometimes has difficulty paying on time. However, the record does not contain any evidence of the spouse's or the applicant's current income, such as paystubs or recent federal income tax returns, to demonstrate that their expenses exceed their income, or that the applicant could assist the spouse financially if she returned to the United States. Without details and supporting evidence of the family's income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The applicant has submitted evidence demonstrating that her spouse suffers from emotional or psychological difficulties without the applicant present. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant remains in Honduras without her spouse.

The spouse's assertions that he will experience security concerns in Honduras, he will be unable to meet his financial obligations, and that he will suffer hardship due to insufficient medical facilities are not supported by any evidence of record. Although the spouse'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). The record does indicate that the spouse is a native of Honduras, lived there for several years, and is familiar with the Spanish language.

The record reflects that relocation to Honduras may entail giving up his three year old framing business. The AAO further notes that relocation to Honduras would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Honduras.

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 U.S. Citizen spouse 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 the applicant merits a waiver as a matter of discretion.

In proceedings for a 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.