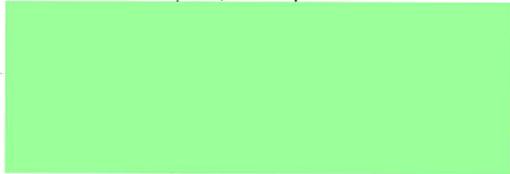




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **JAN 02 2013** Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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:

SELF-REPRESENTED

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 our 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-190B, 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 a 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 Acting Field Office Director, Ciudad Juárez, México, 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 (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 10 years of her last departure. The applicant is the spouse of a U.S. citizen. The applicant seeks a waiver of inadmissibility 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 U.S. citizen husband and U.S. citizen child.

The field office director concluded that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the applicant asserts that the director erred in finding that her husband will not suffer extreme hardship if she is denied admission to the United States. The applicant asserts that the evidence outlining psychological and emotional difficulties demonstrates extreme hardship to her qualifying relative. The applicant asserts that the favorable factors in her case outweigh the negative ones, and contends that the waiver should be granted as a matter of discretion.

The record includes, but is not limited to: a statement from the applicant; statements from the applicant's husband; a medical statement concerning the applicant; and a letter of clearance from the Phoenix police department concerning the applicant.

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 has been reviewed and considered in rendering a decision on the appeal

Section 212(a)(9)(B) of the Act, in pertinent part, 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.

(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.

The record shows that the applicant entered the United States without inspection on January 21, 1996 and remained in the United States until October 2010, when the applicant departed the United States to attend an immigrant visa interview at the U.S. Consulate in Ciudad Juarez, Mexico. The AAO finds that the applicant thus accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions, until her departure in October 2010. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of her 2010 departure, she is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility on appeal.

Section 212(a)(9)(B)(v) of the Act provides that:

Waiver.-The Attorney General [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 to the satisfaction of the Attorney General [Secretary of Homeland Security] 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 [Secretary of Homeland Security] regarding a waiver under this clause.

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. Hardship to the applicant or other family members can be considered only insofar as it results in 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Here, the record reflects that the applicant is married to a U.S. citizen. The applicant also has a U.S. citizen daughter. The applicant's spouse meets the definition of a qualifying relative. The applicant's child is not a qualifying relative for purposes of the waiver sought and, therefore, any hardship she might experience as a result of the applicant's inadmissibility will be considered only to the extent it results in hardship to the applicant's 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 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. 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 the 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 is 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 AAO now turns to the issue of whether the applicant has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

In his statement on appeal dated October 10, 2011, the applicant's husband states that he loves the applicant and her daughter, that the applicant is a good, honest, and hard-working person, that he

does not want to lose his family, and that he does not want them to suffer the way he did when he lived in Mexico. The applicant's husband states that he has been mentally and emotionally struggling to survive apart from his family. The applicant asserts that he will not relocate to Mexico, and that it will be difficult for him to visit the applicant and his daughter there because his employment as a truck driver requires him to travel and work long hours. He further states that it is financially difficult to provide for the applicant and their daughter in Mexico while also maintaining a household in the United States.

The applicant's spouse states that most of his family lives in the United States and that only the applicant and their child live in Mexico. He further states that if the applicant is denied admission, he would have to travel 30 hours to visit her in her hometown of Zacatecas, as he does not want her to move to a northern border town because of the narcotics-related violence. He asserts that the separation has affected him, and that he worries about corruption, violence, and his family's well-being in Mexico. Lastly, he asserts that he will remain in the United States if the applicant is denied admission, as there are no jobs in Mexico and he will be unable to meet his monthly obligations.

A doctor's letter in the record, dated August 8, 2011, states that the applicant has showed signs of depression, for which she has received medical treatment for approximately eight months. However, it is noted that hardship to an applicant for admission is not included as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Accordingly, hardship to the applicant herself will be considered only to the extent that it causes the applicant's husband to experience hardship.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's husband would experience emotional, financial, medical, and psychological hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States and he remained in the United States. Here, the medical documentation refers only to the applicant, and the record does not include evidence indicating how such a diagnosis would result in extreme hardship to the applicant's husband. Additionally, the record contains no medical evidence indicating that the applicant's husband has been affected by his separation from the applicant and their daughter. Though the AAO acknowledges the applicant's husband's claim that separation from the applicant has been difficult on the family, the record lacks corroborative evidence of his assertion that he is experiencing extreme depression. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the difficulties described by the applicant's husband, and as demonstrated by the evidence in the record, are the common results of removal or inadmissibility and do not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The AAO acknowledges the applicant's assertions that he is employed as a truck driver and that he will be unable to find a job in Mexico offering similar earnings and benefits. The applicant's husband also asserts that the family will encounter financial hardships if he joins the applicant and their daughter in Mexico. However, these assertions are unsupported by the other record evidence. That is, the record does not contain documentary evidence, such as tax returns, pay stubs, or employer reference letters, indicating that the applicant's husband is the primary source of the

family's household income. Moreover, he has failed to submit documents evidencing how separation from the applicant and their daughter is affecting his family's finances. There is also no documentation in the record supporting the applicant's husband's claims made pertaining to economic conditions in Mexico. Furthermore, the record does not include evidence indicating that inadequacy of earnings in Mexico is such that he would be unable to meet the family's needs through employment in that country. Although the applicant's assertions 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 record also contains no evidence to corroborate the general assertions made by the applicant's husband regarding employment options or the safety concerns in Mexico. For instance, the record does not include documentation from trusted country conditions sources to support the applicant's claims made pertaining to country conditions in Mexico including economic and safety-related issues. Further, the applicant has noted in his statements that he would remain in the United States in the event of the applicant's denial of admission. Here, as the applicant has not asserted and the record evidence does not demonstrate difficulties or hardships to the applicant's husband were he to relocate to Mexico, the AAO cannot make a determination of whether the applicant's husband will suffer extreme hardship upon relocation.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests 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.