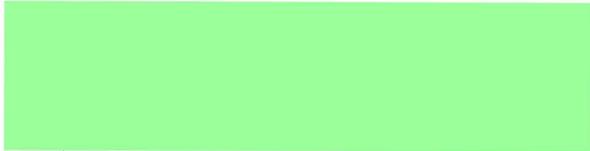


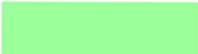


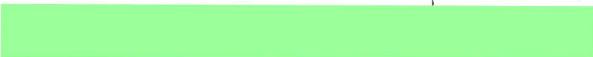
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAR 18 2013** OFFICE: CIUDAD JUAREZ, MX (MIAMI)

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:

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 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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Ciudad Juarez, Mexico, and 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 to be inadmissible to the United States under 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 country for more than one year and seeking readmission within ten years of his departure from the United States. The applicant is married to a U.S. citizen and he 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 wife and child.

In a decision dated April 6, 2012, the director determined the applicant had failed to establish his U.S. citizen spouse would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

The applicant asserts on appeal that his wife will experience extreme emotional and financial hardship if he is denied admission into the United States. In support of these assertions the applicant submits letters from himself and his father-in-law, prescription evidence, financial documentation, and academic information for their son.

The record also contains a letter from the applicant's wife, documents relating to the applicant's court proceedings concerning his traffic violations in Arizona and Indiana, photographs, drawings their son made, and documents establishing relationships and identity. 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-

(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 entered the United States without admission or parole in October 1998 and that he remained unlawfully in the country until October 2005. 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. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his 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. citizen wife is his qualifying relative under section 212(a)(9)(B)(v) of the Act. The applicant refers to hardship their child would experience if the applicant’s waiver application is denied, however 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)(v) of the Act. Hardship to the applicant’s child will therefore not be considered, except as it may affect the applicant’s qualifying family member.

The applicant’s wife states that she feels “incomplete” without the applicant, that she is “consumed with depression” and that she has been living with sadness and stress that sometimes is overwhelming due to the applicant’s absence. She adds that it is financially difficult supporting their family without the applicant’s help, she now has two jobs, and as a result she is unable to spend much time with their son. Additionally, she asserts that their son also misses the applicant and the separation is destructive to his emotional development.

The applicant states that he and his wife have been married since 2002; his wife was born and raised in the United States; she has extensive family ties to the United States, including her parents and two siblings; and their son was born in the United States. In order to pay their bills, his wife has a full-time and a part-time job, and she has moved in with her parents. His wife feels stress because she spends less time with their son. She has been diagnosed with major depressive disorder and has been prescribed medication since the applicant returned to Mexico. The applicant submits medical prescription evidence to corroborate this claim. His wife cannot move

to Mexico because it would be dangerous for their family there. Their son does not speak Spanish and would receive an inferior education in Mexico. In addition, his wife's father is disabled and is unable to travel, his wife helps care for her father, it would be difficult for his wife to find work in Mexico, and it would be prohibitively expensive to return to the United States for family visits.

The applicant's father-in-law states in a letter that he has Crohn's disease, has undergone several surgeries over a nearly 40-year period, takes multiple medications, and is disabled. The applicant's wife helps him financially and with home and transportation needs, and he relies "heavily" on her to "maintain a minimal standard of living."

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission into the United States and she relocated to Mexico to be with him. The applicant's wife was born and raised in the United States, she would lose her employment in this country, and she would be separated from her parents and family if she moved to Mexico. Additionally, the applicant's wife would experience emotional hardship if she were to separate from her disabled father, who relies on her for assistance. Moreover, according to the Department of State travel warning for Mexico updated on November 20, 2012, "high rates of crime and insecurity" exist in Ecatepec, where the applicant lives, which corroborates the applicant's concerns that moving there could be dangerous. See [http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_5815.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html).

The AAO finds, however, 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 were denied admission and she remained in the United States. The record lacks evidence to corroborate assertions that the applicant contributed financially to their household or to establish that his wife is unable to pay their bills. The evidence submitted does not show that the applicant's wife must live with her parents out of financial necessity or that she would experience extreme financial hardship if she remained in the United States. According to copies of the applicant's wife's income tax returns, she earns \$31,463 a year. The record also includes evidence of the federal government's 2012 poverty guidelines, which provide that the poverty rate for a family of two is \$15,130. Moreover, the prescription evidence does not support claims that the applicant's wife has been diagnosed with major depressive disorder. The record additionally lacks evidence to corroborate assertions that their son is experiencing conditions that would cause the applicant's wife extreme emotional hardship, and the record lacks any other evidence to establish that the applicant's wife is experiencing emotional hardship beyond that normally experienced upon inadmissibility or removal of a family member due to her separation from the applicant.

Although the applicant'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.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case. Furthermore, because 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.