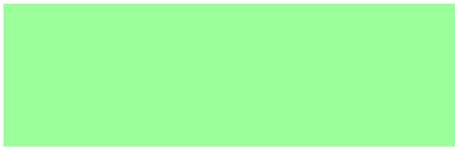




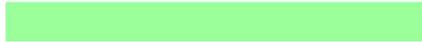
**U.S. Citizenship
and Immigration
Services**

(b)(6)



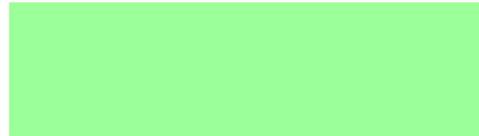
DATE: **MAR 28 2013** OFFICE: MEXICO CITY (CD. JUAREZ)

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:



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

(b)(6)

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, Mexico, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, however, the underlying application remains denied.

The record reflects that 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 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 ten 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 and child.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated June 16, 2009.

The AAO affirmed, finding that the applicant did not submit sufficient evidence to demonstrate her U.S. Citizen spouse would experience extreme hardship given her inadmissibility. *See AAO Decision*, April 20, 2012.

On motion, counsel for the applicant asserts that she is not inadmissible pursuant to section 212(a)(9)(C) of the Act, and that the contracts clause of the U.S. Constitution as well as the Defense of Marriage Act does have bearing on the applicant's case. Counsel further urges that the emotional effects of separation between the applicant and her spouse amount to extreme hardship.

The record includes, but is not limited to, statements from the applicant and her spouse, medical documents concerning her son and her spouse, a letter from her spouse's employer, family photographs, identity documents, letters of support, an evaluation of the applicant and her spouse, and a letter from a potential employer. The entire record was reviewed and considered in rendering a decision on the motion.

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.

....

(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 admitted under oath that she entered the United States without inspection and departed to Mexico on February 11, 2008. The AAO therefore affirms that the applicant accrued unlawful presence from April 1, 1997, until her departure on February 11, 2008. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act and requires a waiver pursuant to section 212(a)(9)(B)(v) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

Counsel contends in the brief that, contrary to the AAO's findings, the applicant is not inadmissible pursuant to section 212(a)(9)(C) of the Act, as the applicant entered the United States without inspection prior to April 1, 1997. Counsel correctly asserts that for inadmissibility pursuant to section 212(a)(9)(C) of the Act to apply, the applicant's entry without inspection must occur after April 1, 1997. *See Memorandum by Paul Virtue, Acting Executive Associate Commissioner*, dated June 17, 1997. However, in its decision on appeal, the AAO did not find that the applicant was inadmissible pursuant to section 212(a)(9)(C) of the Act. *See AAO Decision*, April 20, 2012. Instead, the AAO found that the applicant was inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act until February 2018 because she accrued more than one year of unlawful presence and subsequently departed the United States. Based on the present record, the applicant does not appear to be inadmissible pursuant to section 212(a)(9)(C) of the Act.

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.

Counsel claims, without citing any law or policy in support, that the contract clause of the U.S. Constitution and the Defense of Marriage Act have some bearing on the Immigration and Nationality Act, specifically, on an application for a waiver under section 212(a)(9)(B)(v) of the Act. The contract clause states:

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post

facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility...

U.S. Const. art. I, §10. Contrary to counsel's assertions that the contract clause forbids federal government interference with state contracts, the contract clause prohibits state, not federal, action. Moreover, as the AAO noted on appeal, there is nothing indicating that the contract clause has any bearing on the Immigration and Nationality Act, which is a federal law. With respect to counsel's contentions on the Defense of Marriage Act (DOMA), there is no indication that DOMA changed the Immigration and Nationality Act, or precludes denial of a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. As stated above, the AAO does consider separation from family members as a hardship factor when considering hardship in the aggregate.

The applicant claims that there is no one to help take care of their son if he were to return to the United States to live with the applicant's spouse without the applicant present. However, counsel indicates that the spouse's entire family lives in the United States, and the record reflects that some of the spouse's family members live either in Waco, Texas, or in Temple, Texas. There is no explanation or evidence on why these other family members could not help take care of the son before or after school. Without this, the AAO cannot determine the hardship the spouse will experience with respect to child care given continued separation from the applicant.

Additionally, despite submission of evidence on the spouse's income, the record does not contain sufficient evidence of the spouse's or the applicant's household expenses to support assertions of financial hardship. Without details and supporting evidence of the family's expenses, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

Moreover, although counsel and the spouse claim the applicant's son will have difficulty accessing medical care in Mexico, a letter from the son's physician in San Luis Potosi, Mexico indicates he was diagnosed and treated in that country. There is no evidence of record to show that the treatment was inadequate, nor is there evidence, such as documentation of the spouse's household expenses, that the applicant and her spouse had difficulty paying for such treatment in Mexico.

Counsel contends that separation between the applicant and her spouse, given their emotional attachment and the societal values of marriage, procreation, and nurturing espoused by the U.S. Congress, amounts to extreme hardship. The AAO again notes that, although the emotional bonds between the applicant and her spouse are 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 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

While the AAO acknowledges that the applicant’s spouse would face difficulties as a result of the applicant’s inadmissibility, such as emotional difficulties, 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 Mexico without her spouse.

Neither counsel nor the applicant submit any further evidence with respect to the hardship the applicant’s spouse may suffer upon relocation to Hidalgo, Mexico, where the applicant and their son reside. Although counsel asserts that members of neither the applicant’s nor the spouse’s family reside in Mexico, counsel provides no evidence to show that the applicant’s parents do not reside there. To the contrary, the record reflects that the applicant’s parents reside in Mexico with the applicant and her son, as she states in a letter that her parents live in an open field ranch setting in Mexico, and her Form G325A, Biographic Information, indicates they both reside in Hidalgo, Mexico. Counsel further fails to provide additional evidence to support assertions on employment in Mexico, or that the applicant’s spouse would face dangers while living in Hidalgo, Mexico. 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 reflects, though, that the applicant's spouse is a native of Mexico, and is familiar with the language and culture of that country.

The AAO notes that relocation to Mexico 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 Mexico.

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, although the motion is granted, the underlying application remains denied.

ORDER: The motion is granted, but the underlying application remains denied.