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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: CIUDAD JUAREZ, MEXICO Date: **AUG 06 2008**
CDJ 2004 780 462 (RELATES)

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City [REDACTED] Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. **The appeal will be dismissed.**

The record reflects that the applicant is a native and citizen of Mexico. The applicant 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 after April 1, 1997. 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 reside in the United States with his U.S. citizen spouse.

The record reflects that the applicant entered the United States without inspection in January 2000 and remained in the United States until November 2005. The applicant and his spouse, [REDACTED] were married in the United States on January 25, 2003. On May 16, 2003, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. The petition was approved on August 24, 2004. The applicant filed an Application for Immigrant Visa (DS-230) and an Application for Waiver of Grounds of Excludability (Form I-601) at the U.S. Consulate in [REDACTED] on or about November 29, 2005.

The district director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated November 14, 2006.

On appeal, counsel contends that the applicant has sufficiently demonstrated that his wife suffers extreme hardship in his absence. Counsel observes that the applicant and his spouse first established a relationship in 1999 and have had two children together, one of whom died in 2004. Counsel asserts that the applicant's spouse also cares for two other children from a previous relationship, but earns only \$300 per week from her business. Counsel states that the applicant's spouse would have difficulty paying for the family expenses without the additional \$500 per month she receives from her father. Counsel points out that the applicant's spouse has been residing in the United States since she was 11 years old, and that she has very few relatives in Mexico. He contends that the possibility of the applicant obtaining a similar paying job in Mexico is slim, and that her children would suffer there because they are unable to speak or write Spanish or accustomed to Mexico's culture and economic conditions. Counsel also submits that it "is reasonable to assume" that the applicant, who has no advanced education, will have a difficult time finding employment in Mexico that allows him to support his spouse and child in the United States. The record contains an affidavit from the applicant's spouse dated December 13, 2006 and a statement from the applicant's spouse dated November 16, 2005. The entire record has been reviewed and considered in rendering a decision on the appeal.

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

- (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 [now Secretary, 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 Attorney General [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.

The record reflects that the applicant entered the United States without inspection in January 2000 and remained in the United States until November 2005, a period in excess of one year. The applicant has not disputed that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

In addition, the Ninth Circuit Court of Appeals in reversing the denial of suspension of deportation to the petitioner in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States”, and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted), *see also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is generally appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request. In this case, the applicant’s spouse has indicated that she “will not go back to Mexico”

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant’s spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO acknowledges that the applicant’s spouse suffers emotionally in the applicant’s absence, but the applicant has not demonstrated that this emotional hardship, when combined with other hardship factors, rises to the level of extreme hardship. The applicant’s spouse has asserted that she has difficulty raising her children by herself, but she has not provided details concerning this hardship, and it is noted that she was caring for her two eldest children herself before she married the applicant. The applicant’s spouse has also asserted that she faces financial difficulties without the applicant’s financial contribution, but she has not indicated, or submitted any evidence indicating, the amount of the applicant’s financial contribution prior to his departure from the United States. 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)). The evidence also shows that the applicant’s spouse’s father supports her and that she is able to meet her financial obligations with this support.

The hardship described by the applicant is the common result of removal or inadmissibility, and it does not rise to the level of extreme hardship based on the record. 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). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

As stated above, the applicant’s spouse has indicated that she will not return to Mexico. Nevertheless, it is noted that the applicant has not submitted evidence beyond the unsubstantiated assertions of counsel and her spouse that the applicant’s spouse will suffer extreme hardship if she 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 his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.