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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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#3

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **OCT 16 2008**
CDJ 2003 502 117 (RELATES)

IN RE: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, 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. She 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 her U.S. citizen spouse.

The record reflects that the applicant entered the United States without inspection in 1996 and remained in the United States until February 2000. The applicant and her spouse, [REDACTED], were married in Mexico on May 15, 1993. On July 15, 2002, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. The petition was approved on December 18, 2002. The applicant filed an Application for Immigrant Visa (DS-230) at the U.S. Consulate in Ciudad Juarez on May 4, 2005 and an Application for Waiver of Grounds of Excludability (Form I-601) on September 19, 2005.

The district director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated June 5, 2006.

On appeal, counsel contends that the applicant was admitted into the United States in B1 or B2 status in 1996. *Applicant's Brief* at 1. Counsel asserts that the applicant was "allowed entry into the United States by Immigration officials at the border crossing," but that they "failed to stamp her passport to reflect that she had been inspected and allowed entry. . . ." *Id.* at 1-2. Counsel further asserts that the applicant's spouse first filed an I-130 petition on the applicant's behalf in February 1998, and that the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on the same date. *Id.* at 2. Counsel asserts that the applicant's spouse has been a U.S. citizen for 11 years and would face the hardship of readjusting to the culture, people and way of life of Mexico if he decided to return there to be with the applicant. *Id.* at 3. Counsel contends that this would have a "daunting economic impact" on the applicant because he would have to abandon his employment with little prospect of finding comparable employment in Mexico. *Id.* at 3-4. Counsel states that the applicant would suffer "pain" if he remains in the United States separated from "the woman he loves and vowed to love until death." *Id.* at 4.

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 1996 and remained in the United States until February 2000. There is no evidence in the record to support counsel’s claims that the applicant was inspected and admitted in a valid immigration status in 1996 or that the applicant first filed an application for adjustment of status in February 1998. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant is now seeking admission to the United States. Therefore, the applicant was unlawfully present from April 1, 1997 until February 2000, a period in excess of one year. The applicant 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 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.

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 the applicant is not granted a waiver of inadmissibility.

There is no evidence of hardship in the record beyond the assertions of counsel, which, as indicated above, do not constitute evidence in this proceeding. Furthermore, even were the AAO to consider counsel’s assertions as evidence of hardship, they are insufficient to demonstrate that any hardship the applicant’s spouse experiences as a consequence of separation from the applicant is extreme. The AAO acknowledges that the applicant’s spouse suffers emotionally in the applicant’s absence, but it has not been demonstrated that this emotional hardship, when combined with other hardship factors, rises to the level of extreme hardship. Likewise, there is insufficient evidence that the applicant’s spouse would suffer extreme hardship if he returned to Mexico, his native country. Counsel has submitted no evidence to support the assertion that the applicant’s spouse would be unable to secure employment in Mexico. The hardship described by counsel 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.

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. 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 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.