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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

H4

FILE: [REDACTED] Office: LOS ANGELES, CA

Date: DEC 27 2006

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)(v)

ON BEHALF OF APPLICANT:

[REDACTED]

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 District Director, Los Angeles, California denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Mexico who entered the United States in about April 1990 and applied for adjustment of status on March 27, 2001. 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, departing, and seeking readmission within 10 years of his departure. The applicant 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 remain in the United States with his U.S. citizen (USC) wife, [REDACTED] and lawful permanent resident (LPR) parents.

The record reflects that Mr. [REDACTED] entered the United States in about March 1900 without inspection and resided here, in unlawful status, until his departure in December 2000. He reentered the United States without inspection in about January 2001. As a result of having been unlawfully present in the United States for more than one year, departing, and seeking readmission within 10 years of his last departure, the district director found the applicant to be inadmissible to the United States. *District Director's decision, dated, March 15, 2005.* The district director also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Id.*

On appeal, counsel for the applicant submits a brief and additional documents. The record of proceeding contains the following: a psychological evaluation from Dr. [REDACTED] a licensed clinical psychologist, dated June 10, 2005; two statements from Mrs. [REDACTED] one dated February 16, 2005 and the other dated April 5, 2005; a letter from Dr. [REDACTED] stating that Mrs. [REDACTED] has been a patient of his since December 2001; medical records relating to a miscarriage Mrs. [REDACTED] had in 2004; the U.S. birth certificate of Mrs. [REDACTED]; the alien registration cards of Mr. [REDACTED] LPR parents; the birth certificates of the couple's child, [REDACTED] Jr., age 3; income tax returns from 1998 to 2000; the couple's marriage certificate; family photos; and a list of Mr. and Mrs. [REDACTED] USC and LPR relatives accompanied by proof of immigration status and statements. The AAO reviewed the record in its entirety before issuing its decision.

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

(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 [now the Secretary 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 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.

A section 212(a)(9)(B)(v) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or LPR spouse or parent of the applicant. Direct hardship the applicant himself and his USC child experience upon denial of admission is not considered in section 212(a)(9)(B)(v) waiver proceedings. Thus, hardship suffered by them will be considered only insofar as it results in hardship to Mrs. Flores.

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*, *supra* at 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 the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family 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 health conditions, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. See *Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

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).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Counsel asserts that Mrs. [REDACTED] suffers from back pain and that she had a miscarriage in 2004. See Mrs. [REDACTED] hardship statement, letter from Dr. [REDACTED] and medical documentation relating to Mrs. [REDACTED] miscarriage. The qualifying relative's access to medical treatment in the United States and in Mexico is a relevant consideration. Although counsel submitted evidence to document that Mrs. [REDACTED] is receiving treatment in the United States for back pain, counsel failed to submit documentation to show that suitable medical care would be prohibitively expensive or unavailable to Mrs. [REDACTED] in Mexico. Mrs. [REDACTED] doctor confirms that she suffers from back pain, but does not assert that her medical condition prohibits her from moving to Mexico or that it prevents her from working here in the United States. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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).

Counsel asserts that denial of the Form I-601 would result in extreme psychological hardship to Mrs. [REDACTED] but did not provide reliable, objective evidence to supplement Mrs. [REDACTED] claim of extreme emotional and

psychological hardship. The applicant submits an evaluation from a clinical psychologist that discusses his wife's mental health. The AAO reviewed this evaluation but can give little weight to it. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report was conducted for the purpose of the applicant's waiver proceeding, and does not represent treatment for a mental health disorder. The applicant has provided no evidence that his spouse received or required follow-up care from a mental health professional. While the evaluation is helpful in providing an understanding of the background and challenges of the applicant's wife, it does not establish that, should the applicant not be admitted to the United States, his wife will suffer emotional consequences beyond those ordinarily experienced by families of those who are deemed inadmissible. In addition, the evaluation notes that Mrs. [REDACTED] would suffer emotionally if separated from her husband but does not explain why Mrs. [REDACTED] would not relocate to Mexico with her husband and son.

Counsel asserts that the district director failed to consider whether denial of the Form I-601 would result in extreme hardship to Mr. [REDACTED] parents. While counsel submits evidence of the immigration status of Mr. [REDACTED] parents, he provides no objective documentation to establish that they would suffer extreme hardship if their son is denied admission to the United States. See *Matter of Obaigbena*. In addition, prior to the submission of the I-601, no mention had been made of his parents' immigration status. The applicant's G-325A Biographic Information indicated that they both resided in Mexico.

Counsel asserts that Mrs. [REDACTED] cannot move to Mexico because she was born in the United States and her parents and siblings all live in the United States. Although it is clear that his wife will experience emotional difficulties, either due to her separation from her spouse, or relocation to Mexico, she faces the same decision that confronts others in her situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation on Mr. [REDACTED]'s wife, while difficult, does not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

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 wife faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of deportation or exclusion 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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of hardship experienced by the families of most individuals who are deported.

In this case, though the applicant's qualifying relative will endure emotional hardship if she remains in the United States separated from the applicant, their situation, based on the documentation in the record, does not rise to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1186(a)(9)(B)(v). 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.