U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MEXICO CITY, MEXICO Date: NOV 04 2009
(CDJ 2005 856 548) (CIUDAD JUAREZ)

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. section 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. 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. She 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 one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen. 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).

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, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 28, 2007.

On appeal, the applicant states that her husband is suffering financially and emotionally due to her absence.

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

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
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> (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.
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> . . . .
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> (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 [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 indicates that the applicant entered the United States in 1998 with a B-2 visitor's visa, and remained beyond her authorized stay, which expired January 2, 1999.[1] She departed voluntarily in July 2004. As the applicant resided unlawfully in the United States for over a year and is now

[1] The AAO notes that the District Director incorrectly stated that the applicant had entered the United States without inspection.

seeking admission within ten years of her last departure from the United States, she 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 directly relevant to a determination of extreme hardship in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to the qualifying relative, the applicant's spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. S*ee Matter of Mendez,* 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or 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 includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; photographs of the applicant, her husband and their daughter; a letter from the applicant's employer, tax records and pay stubs for the applicant's spouse, money transfers to the applicant in Mexico and bank records.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel states that the applicant's spouse is depressed, suffering emotionally due to the exclusion of his wife and daughter, and that he is experiencing financial hardship due to having to travel to

Mexico. While the AAO accepts that the applicant's spouse desires to have his family with him, the record does not contain any documentary evidence, e.g., a psychological evaluation by a licensed mental health practitioner, that the emotional impact of separation on him rises above that normally experienced by the relatives of excluded aliens. *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996); *see also Perez v. INS,* 96 F.3d 390 (9th Cir. 1996)(holding that the common results of deportation are insufficient to prove extreme hardship, and that "extreme hardship" is hardship that was unusual or beyond that which would normally be expected upon deportation). The record also lacks any specific evidence of financial hardship. While the applicant has submitted copies of tax returns, bank records, an employment letter, and money transfers to the applicant in Mexico, there is no evidence of his monthly financial obligations or of any costs associated with traveling to Mexico to visit the applicant and his daughter. Without further evidence that is probative on the matter of financial hardship, the AAO cannot make an accurate determination as to the financial hardship being experienced by the applicant's spouse.

Counsel also notes that the applicant's spouse wants his daughter to be educated in the United States so that she can realize her dreams and become a professional. While the AAO acknowledges the applicant spouse's desires for his child, they do not constitute an extreme hardship for him. *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994)(reasoning that the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue their lives which they currently enjoy.) As such, the record does not demonstrate that the applicant's spouse is experiencing emotional or financial hardship.

Counsel asserts that the applicant and her daughter are suffering hardship. He indicates that the applicant has been diagnosed with depression and that her daughter is suffering from physical and mental ailments. In support of his claims, counsel points to letters in the record from doctors treating the applicant and her daughter in Mexico. The letters, however, are written in Spanish. The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to U.S. Citizenship and Immigration Services be accompanied by a full English-language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. As such, these letters will not be considered in this proceeding.[2] Moreover, as noted above, hardship to the applicant or her child is not directly relevant to a determination of extreme hardship in 212(a)(9)(B)(v) proceedings and the record does not document how any hardships they might be suffering affect the applicant's spouse, the only qualifying relative. The AAO notes that the two Board of Immigration Appeals cases that counsel states support consideration of hardship to a child have been superseded by statute and are no longer valid precedent.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant.

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[2] A Spanish-language statement from the applicant is also found in the record and will not be considered for this same reason.

In his statement, the applicant's spouse reports that he has lived in the United States since 1999 and that most of his family lives in the United States. While he indicates that he still has strong ties to Mexico because his mother and other relatives live there, he states that it would not be the same to live there. The applicant's spouse asserts that there are more opportunities to succeed in the United States and that he would like to go to school and to have the applicant go to school and learn English. While the AAO accepts the applicant's spouse's statements, it again notes that these types of impacts do not rise to the level of extreme hardship. *See Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994)(reasoning that the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue their lives which they currently enjoy.) Accordingly, the record does not demonstrate that the applicant's spouse would experience extreme hardship if he joined the applicant in 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 husband faces extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's husband will experience hardships as a result of the applicant's inadmissibility. However, these hardships, whether considered individually or in the aggregate, do not rise above the hardship commonly associated with removal and separation, and, therefore, do not rise to the level of "extreme" as informed by relevant precedent. 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. 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.