**U. S. Department of Homeland Security**
U. S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 809 733 (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, 8 U.S.C. §§ 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Shumway

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, [redacted] is a native and citizen of Mexico. He 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 and seeking admission within 10 years of his last departure from the United States. 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 return to the United States to join his U.S. citizen spouse.

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, the applicant's spouse asserts that she has been forced to part from her life partner and she maintains two separate households. She states that she is unable to work longer hours due to lower back pain. She states that she is now reaching the limits of her mental health and should the pressure continue for a long time her mental and physical health could be affected. She states that she is concerned that she will lose her employment. She states that the unemployment rate in Mexico is very high and it will be difficult for the applicant to find employment in Mexico because of his age.

In support of the application, the record contains, but is not limited to, a letter from the applicant's spouse, a letter from the applicant's church, a letter from the applicant's landlord, a medical document, electronic pay stubs, an employment verification letter, evidence of car insurance, and checking account statements. The entire record was reviewed and considered in rendering a decision on the appeal.

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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> . . . .

> (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 shows that the applicant entered the United States without inspection in January 2003. The applicant remained in the United States until departing in December 2005. The applicant accrued unlawful presence from January 2003 until December 2005. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of his December 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of his last departure.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).

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 (BIA) 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 United States 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).

An analysis under *Matter of Cervantes-Gonzalez* is 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 reflects that the applicant wed [redacted] a native of Mexico and naturalized U.S. citizen, on January 17, 2004. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes.

The applicant's spouse asserts, on appeal, that she has been forced to part from her life partner and she maintains two separate households. She states that she is unable to work longer hours due to lower back pain. She states that she is now reaching the limits of her mental health and should the pressure continue for a long time her mental and physical health could be affected. She states that she is concerned that she will lose her employment. She states that the unemployment rate in Mexico is very high and it will be difficult for the applicant to find employment in Mexico because of his age.

Although the AAO will consider medical hardship as factor contributing to a finding of extreme hardship, such hardship must be documented in the record. In the present case, the record contains no medical documentation related to the applicant's spouse's lower back pain. There is nothing in the record to demonstrate the extent of her condition and its effect on her daily activities. Further, the record does not contain a psychological assessment of the applicant's spouse to demonstrate the impact of their separation on her mental health. 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)). While the applicant's spouse's unsupported assertions are relevant and have been considered, they are of little weight in the absence of supporting evidence. For these reasons, the AAO cannot conclude that the applicant's spouse is suffering from medical hardship due to the applicant's inadmissibility.

Similarly, the AAO finds that the record fails to demonstrate that the applicant's spouse is suffering from financial hardship due to the applicant's inadmissibility. The record contains a letter from the applicant's spouse's employer, Medtronic, dated January 25, 2005, which states that she is earning an annual salary of $30,160. The record contains no evidence of the applicant's spouse's expenses and other liabilities. Nor does it contain evidence of her remittances to the applicant in Mexico. Therefore, the record does not contain sufficient documentation to fully assess her financial situation. As previously stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

The AAO recognizes that the refusal of the applicant's admission to the United States may cause some economic detriment to his spouse. However, a reduction in her standard of living does not necessarily result in extreme hardship. U.S. courts have held that 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); *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); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) ("the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.").

Finally, the applicant's spouse asserts in the December 3, 2005 letter she filed with the waiver application that she could not move to Mexico because it would be extremely hard for her to move there. She states that they have great plans for the future and if the applicant is declared inadmissible their dreams would come crashing down. She states that they would not be able to start all over again in Mexico. She states that moving to Mexico would strongly affect their lives.

The AAO finds that the applicant's spouse's assertion that it would extremely hard for her to move to Mexico is a broad generalization. The applicant's spouse has failed to quantify the anticipated hardship that she would suffer in her native county of Mexico or submit evidence to substantiate her claims. Accordingly, the AAO cannot conclude that the applicant's spouse would suffer extreme hardship if she relocated to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, 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 eligibility for a waiver of inadmissibility 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 remains entirely 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.