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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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FILE: [redacted] Office: MEXICO CITY, MEXICO Date: NOV 30 2009
(SDO 2004 591 007) (SANTO DOMINGO, DR)

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 the Dominican Republic. He 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 his last departure. He is married to a United States citizen and claims to be the stepfather of two United States citizens. 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).

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, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 4, 2007.

On appeal, counsel for the applicant states the applicant's spouse will suffer extreme harm if the applicant is excluded from the United States.

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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> . . . .
>
> (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 indicates that the applicant entered the United States without inspection on February 21, 2000, and remained until he departed voluntarily in February 6, 2007. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, 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 an applicant or a nonqualifying relative is not directly relevant in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to a qualifying relative. 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 accompanies 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; statements from the applicant's spouse; and a copy of the marriage certificate for the applicant and his spouse.

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

Counsel for the applicant asserts that the applicant's spouse's has to work two jobs because she is the sole source of revenue for her family, and is unable to take time off from work to attend school functions and meetings for her two children due to the applicant's absence. He further asserts that the continued exclusion of the applicant is causing severe emotional, psychological and financial hardship to the family. Counsel also contends that the District Director in his decision on the applicant's waiver application erroneously relied on cases involving criminal aliens as the applicant has no record of criminal violations.

In her statements, the applicant's spouse asserts that without the applicant she is experiencing extreme emotional and financial difficulties, and worries about food and rent, as well as the applicant's personal safety and their separation. She further contends that she is having great difficulty managing her home and her children in the applicant's absence. The applicant's spouse states that she is the only source of income for herself and her two children, has to work two jobs and is unable to attend meetings and functions at the schools where her children are enrolled because she cannot afford to take time off from work. She also asserts that she is under a great deal of stress and that her ability to hold her family together is slipping. The applicant's spouse also notes that she is unable to concentrate on her work, her employers are unhappy with her and she fears losing her jobs.

A review of the District Director's decision reveals that the cases cited were proper and constitute *informative precedent. The cases referenced by the District Director* were not cited for their individual outcomes or fact patterns, but because they are informative as to what constitutes extreme hardship. *In Re Cervantes-Gonzalez,* 22 I & N Dec. 560, 565 (BIA 1999)(noting the factors articulated in cases involving suspension of deportation and waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion); see also *Hassan v. INS,* 927 F.2d 465, 467 (9th Cir. 1991) (noting that suspension cases interpreting extreme hardship are useful for interpreting extreme hardship in section 212(h) cases).

In examining the record, the AAO notes that it fails to support the assertions of counsel and the applicant's spouse. There is no documentary evidence that the applicant's spouse is employed in two jobs, that she is the mother of two children, that these children are enrolled in the referenced schools, that the applicant's spouse has any financial obligations that she is unable to meet, that the applicant was previously contributing income to the family household or that she is suffering from a level of stress that is threatening her employment. 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 unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Without documentary evidence to establish the level of emotional or financial stress experienced by the applicant's spouse the record does not establish that the applicant's spouse would experience extreme hardship if the applicant were to be excluded and she remained in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. Counsel states that the Dominican Republic is a very poor country, with widespread poverty and high unemployment. He asserts that these conditions would result in extreme hardship, above and beyond economic consequences, including a lack of education for the applicant's stepchildren and a lack of access to medical care and the treatment of illness, and malnutrition. Counsel and the applicant's spouse have also asserted that her children speak no Spanish, and would experience a significant interruption of their education if they were to join the applicant in the Dominican Republic. The applicant's spouse further states that in the Dominican Republic the family would be unable to afford basic family necessities like food, housing, medical attention and education.

The record, however, contains no evidence, e.g., published country conditions reports, to document counsel's or the applicant's spouse's assertions regarding the economic situation in the Dominican Republic. In addition, the AAO notes that the applicant's stepchildren are not qualifying relatives for the purposes of this proceeding and that the record fails to document how any hardships they might encounter upon relocation would affect the applicant's spouse, the only qualifying relative. Moreover, as previously indicated, the record fails to establish that the applicant's spouse has two children. Accordingly, the record fails to demonstrate that the applicant's spouse would experience extreme hardship if she were to relocate with the applicant to the Dominican Republic.

When considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the hardships described in the record do not support a finding that the applicant's spouse would face extreme hardship if he is refused admission. 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 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.