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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

PUBLIC COPY

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FILE: [redacted] (CDJ 2004 801 394)

Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ)

Date: NOV 30 2009

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 and has one U.S. citizen child. 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 April 9, 2007.

On appeal, counsel for the applicant states that the District Director did not properly evaluate the applicant's waiver application, and that the applicant's spouse will suffer extreme hardship if the applicant is excluded.

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.
>
> (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 establishes that the applicant entered the United States without inspection in August 2000 and remained until she departed voluntarily on March 31, 2006. As the applicant resided unlawfully in the United States for over a year and is now 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 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; a letter from the applicant's employer; and a country conditions report on Mexico from the Library of Congress – Federal Research Division.

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

Counsel asserts that the cases cited by the District Director were inappropriate, as they relate to the exercise of discretion and involve different fact patterns. Counsel further asserts that the applicant's spouse will suffer extreme hardship based on separation from the applicant and their child, who currently resides in Mexico with the applicant, and that he would be unable to raise their son without the applicant's assistance if he resided in the United States.

The applicant's spouse states that he loves and misses his wife and child, that their separation is very difficult, that he is unable to raise their child without the applicant's presence. He further asserts that he worries about the applicant's and his child's safety in Mexico, and wants the applicant and his child to have access to the educational, cultural, economic and health opportunities in the United States.

Counsel's assertion that the District Director's reference to various cases was inappropriate is not persuasive. The AAO notes that *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973) and *Matter of Lee,* 17 I&N Dec. 275 (Comm. 1978) address the exercise of discretion in cases involving inadmissibility under section 212(a)(9) of the Act rather than the determination of extreme hardship. However, the remaining cases cited by the District Director were not referenced based on their direct holdings or their fact patterns, but because they are informative as to what constitutes extreme hardship, the standard necessary to receive a waiver of grounds of inadmissibility in this proceeding. As such they provide an informative basis on which to evaluate the applicant's claims of extreme hardship. The AAO observes that in *Matter of Cervantes-Gonzalez, supra,* the Board of Immigration Appeals noted that it found factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful in assessing extreme hardship.

The AAO acknowledges the statements and sentiment of the applicant's spouse, that he misses the applicant and their child, is suffering from their separation, worries for their health and safety, cannot provide coverage for their health needs in Mexico, and wishes them to have access to resources in the United States. However, hardship to the applicant or her children is not directly relevant to a determination of extreme hardship in these proceedings and the record does not demonstrate that hardships the applicant or her child might experience in Mexico would result in hardship to the applicant's spouse. Further, the AAO notes that the national overview of Mexican country conditions prepared by the Library of Congress lacks the detail and specificity to establish that the applicant and her child are at risk in Mexico. In this case the record fails to document that the applicant's spouse is experiencing any impacts that, individually or in the aggregate, rise above the hardship normally experienced by the relatives of excluded aliens. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). Accordingly, the record fails to establish that the applicant's spouse will experience extreme hardship if the applicant is excluded and he remains in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. Counsel asserts that the applicant's spouse would experience extreme hardship if he were to join the applicant in Mexico because he would be unable to find a job or support his family.

As previously noted, the country conditions article from the Library of Congress is informative of the conditions in Mexico at a national level but not sufficiently probative of the individual applicant's spouse's case to establish that he would be unable to find employment in Mexico. Neither does the record adequately document that the applicant herself would be unable to find employment in Mexico to provide financial income for their family, or that the applicant, her spouse and their child would not qualify for health care under Mexico's public health care system. The AAO acknowledges that the applicant's spouse wishes his family to have access to the educational, medical and economic resources of the United States, but this is not sufficient to establish extreme

hardship. *Matter of Ige*, 20 I&N 880 (BIA 1994); *see also Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir. 1986)(concluding that hardship resulting from a lower standard of living, difficulties of readjustment and environment, reduced job opportunities, did not rise to the level of extreme hardship). Therefore, the record does not establish that the applicant's spouse would suffer extreme hardship if he were to relocate to Mexico with the applicant.

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 husband would face extreme hardship if she is refused admission. The AAO recognizes that the applicant's husband will experience hardship as a result of the applicant's inadmissibility. The record, however, does not distinguish his hardship from that commonly associated with removal and exclusion, and it does not, therefore, 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 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.