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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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[redacted]

FILE: [redacted] (CDJ 2004 772 355)

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 January 17, 2007.

On appeal, the counsel for the applicant states that the applicant's spouse and child will both suffer extreme hardship if her waiver application is denied.

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-
>
> > (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 indicates that the applicant entered the United States without inspection in June 2003 and remained until she departed voluntarily in March 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 or her child 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; photographs of the applicant, her husband and their son; tax records, W-2 forms and pay stubs for the applicant's spouse; statements from family; a statement from [redacted] regarding his treatment of the applicant for depression and her son for frequent abdominal pain; copies of prescriptions (in Spanish) for the applicant and her son; a copy of the birth certificate for the applicant's child; a copy of the marriage certificate for the applicant and her spouse; and copies of airline boarding passes and travel receipts for a trip to Mexico taken by the applicant's spouse.

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

Counsel asserts that the applicant is being treated for depression, and that the applicant's U.S. citizen child, who is currently in Mexico, is experiencing stress-related medical problems (abdominal pains). She further asserts that the applicant's spouse is under significant financial strain as the sole provider of income for himself and the applicant in Mexico. The applicant's spouse asserts that he misses the applicant and his young son, and is suffering from being unable to watch his son grow and participate in his life. He also states that he is not financially stable as he recently purchased a home with a high monthly mortgage payment and must still send the applicant money to live and to see a specialist for her depression. The applicant's spouse also notes that his son has not adjusted to the climate in Mexico as he frequently gets sick.

The record contains two brief statements from [redacted] with regard to the mental status of the applicant and the health of her son. These statements are sufficient to indicate that the applicant is experiencing emotional strain and is seeing a therapist to cope with her feelings. However, they fail to establish the severity of her depression; how it affects her ability to function on a daily basis, including caring for her son; or that her condition cannot be adequately treated in Mexico. Although [redacted] reports that the applicant's son is experiencing frequent abdominal pain that may be related to a colon problem, he does not indicate that this problem is serious or that he is unable to provide treatment. Accordingly, the record fails to establish that the applicant or her son are suffering from any significant medical conditions or that they suffer from conditions that cannot be successfully treated in Mexico. Further, as previously noted, hardship to the applicant or her child is not directly relevant to a determination of extreme hardship in this proceeding, and the record fails to establish, through documentary evidence, that the health problems of the applicant's spouse and son have resulted in hardship to the applicant's spouse, the only qualifying relative.

The record also lacks any documentation that demonstrates that the applicant's spouse is experiencing any emotional hardship beyond that which is normally experienced by the relatives of excluded aliens. While the AAO acknowledges the statements and sentiments of the applicant's spouse, it notes that the record contains no documentary evidence, e.g., an evaluation by a licensed mental health practitioner, to establish how separation has affected him. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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 record also fails to include sufficient financial documentation to establish the financial situation of the applicant's spouse. The record contains copies of the applicant's spouse's tax returns, paystubs, checks made out to the applicant, monthly mortgage payment, and auto insurance payment, as well as documentation related to a trip the applicant's spouse made to Mexico. It does not, however, document the full range of financial obligations of the applicant's spouse, including monthly household expenses, or demonstrate that he is unable to cover his living expenses. There is no evidence of accrued debt, unpaid financial obligations or other impending financial stress. Without additional evidence as to the financial impact of separation on the applicant's spouse, the record does not establish that he is experiencing financial hardship. As an examination of the record does not reveal any hardship factors that, when considered in the aggregate, establish that the

applicant's spouse is encountering hardship beyond what is normally experienced by the relatives of excluded aliens, the AAO does not find that the applicant's spouse would 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 it would constitute an extreme hardship for the applicant's spouse to leave his life in the United States to relocate with the applicant to Mexico and that he would face the severe emotional and psychological consequences of starting his life anew in a foreign country. She further states that the applicant's spouse is gainfully employed in the United States and that he would be largely unemployable in Mexico because he is a citizen of the United States and has no national status in Mexico. Counsel also claims that relocation would result in the loss of the family's stability and an uncertain future. She states that the applicant's and her spouse's son, who is already suffering from severe medical conditions, would be unable to obtain the medical assistance and educational opportunities he needs.

The record does not support counsel's claims. It fails to document, e.g., published country conditions reports on the Mexican economy and unemployment, or evidence relating to employment requirements in Mexico, that the applicant's spouse would be unable to find employment if he were to join the applicant in Mexico. Nor does the record establish that the applicant herself would be unable to find employment to help support her family in Mexico. In addition, the inability to pursue a chosen profession, or the loss of a job, and the fact that health and educational facilities may not be comparable to those in the United States does not constitute extreme hardship. *See Matter of Ngai,* 19 I&N Dec. 245 (BIA 1984) (holding that common results of the bar, such as separation, financial difficulties, etc., in themselves are insufficient to warrant approval of an application absent other greater impacts); *Matter of Ige*, 20 I&N 880 (BIA 1994) (reasoning that the mere existence of a reduction in a standard of living or financial hardship or difficulty readjusting, without more, do not constitute extreme hardship, and the fact that economic, educational, and medical facilities and opportunities may be better in the United States does not in itself establish extreme hardship.) The record also fails to corroborate counsel's claim that the applicant's son would be unable to obtain medical assistance or educational opportunities in Mexico. The record provides no documentary evidence regarding education in Mexico. It does, however, indicate that the applicant's son, who is experiencing frequent abdominal pain, is receiving treatment in Mexico from the same physician who is caring for the applicant. Moreover, as previously discussed, the applicant's son is not a qualifying relative in this proceeding and the record fails to indicate how any hardship he would encounter as a result of living in Mexico would affect his father, the only qualifying relative.

When considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the hardship factors described in the record do not support a finding that the applicant's husband would face extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's husband will experience hardship as a result of the applicant's inadmissibility. However, U.S. court decisions have repeatedly held that the common results of removal or inadmissibility, such as separation and financial difficulties, 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.