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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

H2

[redacted]

OCT 01 2009

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:

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:

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

Michael Flannery

John F. Grissom
Acting 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, [redacted]

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, counsel asserts that the applicant is his spouse's sole source of emotional and financial support. Counsel states that the applicant's spouse suffers from severe depression, which has increased because of her husband's inability to return to the United States to care for her. Counsel states that the applicant's spouse is being treated for bipolar schizophrenia. In support of the application, the record contains, but is not limited to, statements from the applicant's spouse, a letter from J[redacted] and the applicant's spouse's medical records. The entire record was reviewed and considered in rendering this decision.

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 shows that the applicant entered the United States without inspection in 2000. The applicant remained in the United States until departing in January 2006. The director found that the applicant accrued unlawful presence from 2000 until January 2006. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of his January 2006 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.

Counsel states that the applicant's spouse suffers from severe depression, which has increased because of her husband's inability to return to the United States to care for her. Counsel states that the applicant's spouse is being treated for bipolar schizophrenia. Counsel states that the applicant's

spouse's current medications are Nexium for gastric problems, Detrol LA for bladder problems, Lorazepam for depression and Zyprexa for her bipolar condition. Counsel states that because of the applicant's spouse's bipolar condition and depression, it is extremely difficult for her to go to medical appointments and take care of her daily activities. Counsel states that the applicant's spouse is scheduled for surgery related to a gastric problem and will not have anyone to assist her in connection with her aftercare. Counsel states that on March 1, 2007, the applicant's spouse had a synocopal episode and blacked out and was transported to the hospital for examination. Counsel states that medically, the episode is clearly related to the impact of the applicant's spouse's depression and bipolar conditions.

The AAO will consider medical hardship as a factor contributing to a finding of extreme hardship. However, such claims must be demonstrated by the record. The record contains a letter dated January 10, 2007 from [redacted] of Urology San Antonio. [redacted] states that the applicant's spouse will undergo surgery in February. He requests the applicant to be present during the month to be his spouse's caregiver while she is recovering. The letter fails to provide any information on the type of surgery that will be performed on the applicant's spouse, how the surgery will affect her daily life activities, and the type of postoperative care she will require. The remaining documentation in the record consists of medical reports, lab test results and medical study results. The AAO finds that the record is lacking any type of plain language interpretation of the findings in these reports. The only interpretation provided is from counsel. No other medical correspondence is in the record to specify the magnitude of the applicant's spouse's medical conditions, aliments or disabilities, and the effects they have on her activities of daily life. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO observes that the record contains a medical intake history from Community Family Medicine, P.A., dated February 5, 2007, which states that the applicant's spouse reported a history of depression, insomnia and anxiety and she is taking Nexium, Lorazepam, Micardia and Embelex. The report states that the applicant's spouse "needs appt with psy on 2/22/07." However, the record does not contain a psychological evaluation or assessment of the applicant's spouse. In fact, the record does not contain any medical documentation related to the applicant's spouse's diagnosis and treatment for a mental illness or disorder. 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)). For these reasons, the AAO cannot conclude that the applicant's spouse has a medical condition that would contribute to a finding of extreme hardship if she remains in the United States separated from the applicant.

The record contains two undated letters the applicant's spouse initially filed with the applicant's waiver application. These letters were resubmitted by counsel as corroborating evidence with the appeal. The applicant's spouse states that before she met the applicant she was undergoing medical treatment for anxiety and depression. She states that after she met the applicant her life was great

and her doctor reduced her medication. She states that now that the applicant is gone she is in the same situation and had to recently seek medical attention. She states that her doctor claims that her anxiety has cause her to go back on her medication and she is taking Lorezan and Zyprexa. She states that she fears that her husband's absence will cause her to undergo depression. She states that she worries about her husband all the time and his absence has had an effect on their close-knit family. She states that financially he helped her with odd jobs here and there.

The AAO notes again that the record does not contain any correspondence from a physician or mental health professional regarding the applicant's spouse's treatment for depression and anxiety and the impact of the applicant's departure on her mental health. As stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Although the applicant's spouse's unsupported assertions are relevant and have been considered, they can be afforded little weight in the absence of supporting evidence.

The AAO notes further that some of the applicant's spouse's statements are inconsistent with statements made by counsel. First, counsel asserts on appeal that the applicant is his spouse's sole source of emotional and financial support. This assertion is inconsistent with the applicant's spouse's letter, which provides, "Financially, he helped me with odd jobs here and there." This statement indicates that the applicant was a help to her financially, and not her primary source of financial support. Second, counsel asserts on appeal that the applicant's spouse lacks family support in the United States. This assertion is also inconsistent with the applicant's spouse's letter, which provides, "His absence has also had an effect on our close net [sic] family. Guillermo has always been a 'handy man' and a great 'baby sitter.' We all miss him dearly." These statements indicate that the applicant's spouse is part of a close-knit family that has emotional attachment to the applicant.

The AAO recognizes that the applicant's spouse is suffering emotionally as a result of her separation from the applicant. Her situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute 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).

Finally, counsel states that the applicant's spouse requires medical treatment which would be more accessible to her in the United States because of her medical health coverage. Counsel's assertion that the applicant's medical treatment is more accessible to her in the United States is based on speculation alone, and is without any documentary support. The record reflects that the applicant is taking several medications, but there is no medical documentation in the record related to the underlying conditions for which she is taking the medications, her treatment schedules, and the prognosis of her medical conditions. Nor is there any documentation related to whether the medications and other requisite medical treatments are available in Mexico. As stated, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. Accordingly, the AAO cannot determine 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.