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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
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Services

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FILE:

(CDJ 2004 761 293)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

IN RE:

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:

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

John F. Grissom, Acting Director
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. 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. 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 found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the *Application for Waiver of Grounds of Inadmissibility (Form I-601)* on August 24, 2006.

On appeal, the applicant's spouse states that she and her spouse want to live the American dream and that she and her husband have a problem associated with bills and separation.

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 January 2004 and remained until October 2005. As the applicant accrued unlawful presence 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 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. 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 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: statements from the applicant’s spouse; a statement from the applicant’s brother-in-law asserting that the applicant is of good moral character; a statement from the parochial vicar at the applicant’s church confirming his participation in the parish; copies of credit card statements and the applicant’s spouse’s car insurance payments; a copy of a birth certificate for the applicant’s spouse; and a copy of a marriage certificate for the applicant and his spouse.

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

The applicant’s spouse asserts that she and the applicant are both depressed at the thought of being separated and that it makes her afraid to think of being without her husband, that they have financial obligations such as rent, auto insurance and credit card debt in the amount of \$8,476, and that her

wages are insufficient to cover these obligations. She also states that she and her husband want to continue their educations.

Hardship to an applicant or other non-qualifying relatives are not directly relevant in 212(a)(9)(B)(v) proceedings, and as such the applicant's spouse's assertions about hardship to the applicant do not bear any significant weight in this matter. The record contains some documentation of the financial obligations of the applicant and his spouse, but does not contain sufficient documentation to support the assertions of the applicant's spouse or establish that she is experiencing extreme hardship. While the applicant and his spouse have accrued debt, the record does not establish that this financial obligation would result in extreme financial hardship for the applicant's spouse. There is nothing in the record that documents the applicant's spouse's income or that establishes that her income is not sufficient to meet her financial obligations. Further, the record includes no documentary evidence to demonstrate that the applicant is unable to work and provide assistance to his spouse from outside the United States. Even in a light most favorable to the applicant, financial difficulty to a qualifying relative does not constitute extreme hardship. *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984). In addition, while the AAO acknowledges that the applicant's spouse wishes to continue her education, her inability to do so does not constitute an extreme hardship. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994)(stating "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue the lives which they currently enjoy.)

As noted above, a determination of extreme hardship should include a consideration of the impacts of relocation on the applicant's qualifying relative. The record fails to document any impacts on the applicant's spouse if she were to relocate with the applicant to Mexico. As such, the record does not indicate that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse faces extreme hardship if he is refused admission. The AAO recognizes that the applicant's spouse would endure hardship as a result of his inadmissibility. The record, however, does not distinguish her hardship from that commonly associated with removal and separation, 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 his 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 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.