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

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U.S. Citizenship and Immigration Services

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OCT 01 2009

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 788 728

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:

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

Michael Grissom

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, the applicant's spouse asserts that her daughter has a medical issue and she cannot continue her career due to her expenses. In support of the application, the record contains, but is not limited to, letters from the applicant's spouse, medical documentation, and a medical billing statement. 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-
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> . . . .
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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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> . . . .
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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 shows that the applicant entered the United States without inspection in February 2000. The applicant remained in the United States until departing in October 2004. The director found that

the applicant accrued unlawful presence from February 2000 until October 2004. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of his October 2004 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.

The record reflects that the applicant wed [redacted] a U.S. citizen, on December 18, 2002. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and her spouse have a five year old U.S. citizen child, [redacted]

The applicant's spouse asserts that on June 28, 2006, her daughter had a seizure while sleeping. She states that not having her husband by her side in this kind of situation is an extreme hardship on her. She states that if something worse would have happened it would be very unfair for the family to be apart. She states that the doctors told her that her daughter is more likely to have more seizures since she already had one. She states that it is an extreme hardship to go through this with her daughter alone.

Although hardship to the applicant's child is not relevant in these proceedings, it will be considered insofar as it results in hardship to the applicant's spouse. The record contains an emergency department medical record from [redacted] of the Methodist Health System, dated June 28, 2006. The report issued on behalf of the applicant's daughter, [redacted] states that she presented to the emergency department with a seizure and was diagnosed with pre-orbital cellulitis febrile seizure. The AAO has carefully reviewed these documents as well as the other medical records submitted by the applicant and his spouse and finds that they corroborate the applicant's spouse's assertion that her daughter had a seizure on June 28, 2006. The medical records state that her daughter's seizure is a "febrile seizure," indicating that it was an isolated incident related to her illness with a fever. According to the National Institute of Neurological Disorders and Stroke, the vast majority of febrile seizures are harmless and occur in one in every 25 children.[1] There is no documentation in the record to demonstrate that the applicant's daughter has suffered from a disability or any type of medical condition as a result of her seizure. Nor is there any documentation that would suggest she continues to suffer from seizures and needs on-going medical treatment. Therefore, the AAO cannot conclude that the applicant's daughter has a medical condition that has resulted in extreme hardship to the applicant's spouse.

The applicant's spouse asserts that she is a temporary employee with Enterprise and is not provided with medical benefits for her daughter. She states that she has found herself in debt with the hospital, and her case is with a collection agency. She states that she only earns enough money to cover basic needs. She states that her husband can provide their family with additional income. She states that her separation from the applicant prevents her from continuing her career objectives and education.

The record reflects that the applicant was billed $240.00 for her daughter's June 28, 2006 visit to the emergency department. The AAO notes that the record does not contain any other documentation related to the applicant's spouse's employment, income and expenses. As such, the AAO does not have sufficient documentation to fully assess the applicant's spouse's financial situation. 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)). 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 recognizes that the applicant's inadmissibility may cause some economic detriment to his spouse. However, the inability to attend school or a reduction in standard of living are typical hardships of individuals separated as a result of inadmissibility, and do not necessarily result in

[1] http://www.ninds.nih.gov/disorders/febrile_seizures/detail_febrile_seizures.htm

extreme hardship. U.S. courts have held that demonstrated financial difficulties alone are generally **insufficient to establish extreme hardship.** ***See INS v. Jong Ha Wang*****, 450 U.S. 139 (1981)** (upholding BIA finding that economic detriment alone is insufficient to establish 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); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) ("the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.").

The applicant's spouse made similar assertions of financial hardship in the letter she initially filed with the waiver application. In the letter she asserts that her daughter, who was then two years old, was displaying behavioral issues due to her separation from the applicant. She states that at night her daughter asks for the applicant and cries when she is told that he is in Mexico. She states that her daughter has trouble sleeping and wakes up in the middle of the night asking for the applicant. She states that her daughter's behavior is aggressive to other kids. She states that she feels stressed out and finds it difficult to raise her daughter on her own. She states that if the applicant was with them it would be much easier to raise their daughter together as a normal family.

The AAO recognizes that the applicant's spouse and daughter are suffering emotionally as a result of their separation from the applicant. Their 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, the applicant's spouse has only discussed the hardships she would suffer if she remains in the United States. The applicant's spouse has not asserted, or submitted evidence to demonstrate, that she would suffer extreme hardship in Mexico if she relocated with the applicant there. 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.