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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

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[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: OCT 09 2009

IN RE: Applicant: [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).

Ellen C. Johnson

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Mexico, initially entered the United States without authorization in 1984 and did not depart until December 2005. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until January 16, 2004 when he divorced his first wife who was the principal applicant on the asylum application filed on December 19, 1991.[1] The applicant was thus 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.[2] The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and lawful permanent resident parents.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated December 1, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated December 27, 2006, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (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.

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[1] No period of time in which an alien has a bona fide application for asylum pending shall be taken into account in determining unlawful presence unless the alien was employed without authorization. Section 212(a)(9)(B)(iii)(II) of the Act. There is no indication that the applicant's asylum application was not bona fide or that he worked without authorization. The asylum application remained pending until July 31, 2004. The applicant's divorce from his first wife terminated his asylum application as there is no indication that he filed a separate application after the divorce.

[2] The applicant does not contest the district director's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

> (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 Attorney General (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....

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

> 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).

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse and lawful permanent resident parents are the only qualifying relatives, and hardship to the applicant, his child from a previous marriage, born in 1990, and/or his spouse's children, born in 1983 and 1990, cannot be considered, except as it may affect the applicant's spouse and/or parents.

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse and/or lawful permanent resident parents would encounter extreme hardship if they relocated abroad to reside with the applicant due to his inadmissibility. With respect to the applicant's lawful permanent resident parents, this criteria has not been addressed. As such, it has not been established that the applicant's lawful permanent resident parents would suffer extreme hardship were they to relocate to Mexico, their native country, to reside with the applicant due to his inadmissibility.
As for the applicant's U.S. citizen spouse, in a declaration she asserts that she would suffer extreme emotional hardship as she would be forced to leave her daughters, one who suffers from depression

and the other who suffers from numerous medical conditions, and who both depend on the applicant's spouse for support. In addition, she notes that relocating abroad would require her to leave her four siblings and extended family members to whom she is very close. Moreover, the record establishes that the applicant's spouse has been gainfully employed and has obtained professional advancement working for the same company for over 15 years, obtaining promotions from cashier, to office worker, to bookkeeper, to assistant store manager and bookkeeper; a relocation abroad would mean career disruption. *Declaration of* [redacted] dated December 22, 2006. Furthermore, counsel references the problematic country conditions in Mexico, including widespread poverty, inadequate health conditions and the high rate of violence, which would all cause hardship to the applicant's spouse. Finally, counsel contends that due to high unemployment and low wages, the applicant's spouse would suffer financial hardship in supporting herself in Mexico and her children in the United States. *Brief in Support of Appeal,* dated December 27, 2006.

Counsel has provided documentation to corroborate the problematic country conditions in Mexico. Moreover, a letter has been provided outlining the applicant's spouse's employment for over 15 years, confirming her current gainful employment as Assistant Store Manager and noting her ability to ultimately become a manager. *See Letter from* [redacted] *Bestway Supermarkets,* dated December 12, 2006. Finally, the U.S. Department of State confirms the problematic country conditions in Mexico and warns of the risks of travel to the country. *Travel Alert for Mexico, U.S. Department of State,* dated August 20, 2009.

Based on the concerns outlined above by the applicant's spouse with respect to her daughters' care, the applicant's spouse's close relationship and unique bond with her family, disruption of her career, concerns about safety in Mexico and financial hardship, the AAO concludes that the applicant's U.S. citizen spouse would face hardship beyond that normally expected of one facing relocation abroad based on the removal of a spouse if she were to live with the applicant in Mexico.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she remains in the United States while the applicant relocates abroad based on the denial of the waiver request. With respect to the applicant's lawful permanent resident parents, the applicant's spouse asserts that her mother-in-law has been diagnosed with severe sinusitis and her father-in-law suffers from high blood pressure and has severe liver problems, and due to their medical conditions, they will suffer extreme hardship were the applicant to reside abroad due to his inadmissibility as they are dependent on the applicant to attend to their needs. *Supra* at 4-5.

It has not been established that the applicant's parents would suffer extreme hardship were the applicant to reside abroad due to his inadmissibility. To begin, the record establishes that the applicant's parents reside in Arizona with their U.S. citizen son, [redacted]. As such, it has not been established that they are dependent on the applicant for their day to day needs, as he was residing in Downey, California prior to his return to Mexico, hundreds of miles away from Buckeye, Arizona, where his parents reside. In addition, no letter has been provided from the applicant's parents' treating physician(s) outlining their medical conditions, the gravity of the situation, the short

and long-term treatment plan, and what specific hardships they will face were the applicant to remain abroad. While the applicant's parents may need to make alternate arrangements with respect to their own care, it has not been established that such arrangements will cause them extreme hardship. As such, it has not been established that the applicant's parents will suffer extreme hardship were the applicant to reside in Mexico while they remain in the United States.

As for the applicant's spouse, she asserts that she will suffer extreme emotional hardship, due to the long and close relationship she has with her husband. She also notes that her daughters will suffer extreme hardship due to long-term separation from the applicant, thereby causing extreme hardship to the applicant's spouse. *Supra* at 3.

It has not been established that the applicant's spouse will suffer extreme hardship if the applicant's waiver request is not granted. Nor has it been established that the applicant's spouse's daughters are suffering extreme hardship due to long-term separation from the applicant, thereby causing extreme hardship to the applicant's spouse. Finally, it has not been established that the applicant's spouse is unable to travel to Mexico, her native country, on a regular basis to visit her spouse. 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 depth of concern over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. 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 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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

The AAO recognizes that the applicant's spouse will endure hardship as a result of continued separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been

established that the applicant's U.S. citizen spouse is suffering extreme emotional and/or financial hardship due to the applicant's inadmissibility.

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 U.S. citizen spouse and/or lawful permanent resident parents will face extreme hardship if the applicant is unable to reside in the United States. Although the AAO is not insensitive to the applicant's spouse's and parents' situation, the record does not establish that the hardships they would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.