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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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FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date: SEP 01 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

John F. Grissom
Acting 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 establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in December 2000 and did not depart until October 2005. 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse, stepchildren, born in 1998 and 2000, and child, born in 2006 [hereinafter referred to as "the children"].

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated July 11, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated August 9, 2006, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

> 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.
> >
> > (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…

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 alien has established extreme hardship to a qualifying relative. 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. The BIA held in *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

> 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.

The record contains references to the hardship that the applicant's children would suffer if the applicant's waiver of inadmissibility is not granted. 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 and/or his in-laws a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant, the children and/or his in-laws cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse contends that she will suffer emotional and financial hardship if the applicant is unable to reside in the United States. In a declaration she states that she is suffering emotional hardship due to the close relationship she has with her husband and due to the emotional hardships her children are experiencing based on their father's long-term physical absence. She notes and documents that her eldest child's biological father died in March 2006, thereby causing increased emotional hardship to her child and to herself. In addition, she references and documents that her youngest child has been admitted to the hospital twice in a two month period due to respiratory distress; she has been prescribed steroids and inhalant treatments to keep her breathing normal.[1] The applicant's spouse asserts that although she has her parents to assist her and the

[1] The record establishes that the applicant's spouse has requested medical eligibility from the State of Iowa for her youngest child. *Letter from* [redacted] *Income Maintenance Worker II, State of Iowa Department of Human Services,* dated April 4, 2006.

children financially and emotionally[2], nothing can replace the love and encouragement a spouse can give. *Affidavit of* [redacted] dated August 9, 2006.

Were the applicant unable to reside in the United States, the applicant's U.S. citizen spouse would have to assume the role of primary caregiver and breadwinner[3] to three young children, without the complete emotional, physical and financial support of the applicant. The AAO thus concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were the applicant to remain abroad while she resides in the United States. The applicant's spouse needs her husband's emotional and financial support on a day to day basis. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's U.S. citizen spouse contends that her children may suffer in Mexico due to substandard education, nutrition and environment. *Supra* at 3. No documentation has been provided that outlines the specific hardships the applicant's spouse, the only qualifying relative in this case, would face were she to relocate to Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Suffice*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, although counsel indicates that were the applicant's spouse to relocate abroad, she would suffer financial hardship, due to the fact that she would be unable to obtain gainful employment, and emotional hardship, as her children would suffer based on problematic country conditions in Mexico and due to the fact that she and her children would be separated long-term from the applicant's applicant's spouse's parents, the AAO notes that 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).

Although the depth of concern and anxiety 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, 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

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[2] The AAO notes that the applicant's spouse's parents claimed two of the applicant's children as dependents on their federal income tax return. *See Form 1040, U.S. Individual Income Tax Return for 2005.*

[3] Prior to the applicant's departure in October 2005, he earned over $20,000, while the applicant's spouse did not earn enough income to report income taxes that year. *See Letter from* dated August 4, 2006 and *Form W-2, Wage and Tax Statement for 2005.* It is evident that the applicant played an integral role in the financial support of the household prior to his departure from the United States.

"extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. 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 thus concludes that the applicant has failed to establish that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

As such, a review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that his U.S. citizen spouse will face extreme hardship were the applicant unable to reside in the United States, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. The record demonstrates that the applicant's U.S. citizen spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son/spouse is refused admission. 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.