

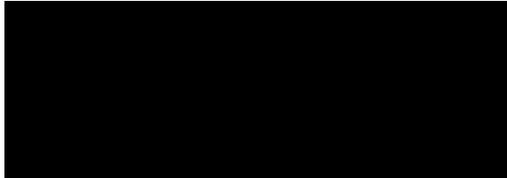
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



H2

FILE:

(CDJ 2004 789 516)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: **SEP 25 2009**

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 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 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 and is the father of a U.S. citizen child. 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 concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 6, 2006.

On appeal, the applicant's spouse states that she is suffering financially and emotionally due to her husband's absence, that her daughter is suffering emotionally. She requests that the applicant's waiver application be granted.

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 May 1996 and remained until he departed voluntarily in October 2005. Therefore, the applicant was unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provision of the Act until October 2005, and is now seeking admission within ten years of

his last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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 or his child 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; statements from family and friends of the applicant attesting to his moral character and the emotional suffering of his spouse and daughter; a medical statement regarding the applicant’s spouse; and a copy of the applicant’s and his spouse’s marriage certificate; and a copy of his daughter’s birth certificate.

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

The applicant’s spouse asserts that she is depressed, has had to see a doctor for her emotional suffering, and is struggling financially to support herself and her daughter. She further states that her

daughter is suffering emotionally due to the absence of her father, the applicant, and that his absence will affect her ability to go to school.

The record contains statements from the applicant's spouse, as well as statements from friends and family asserting that the applicant's spouse and daughter are experiencing depression and sadness as a result of the applicant's exclusion. There is also a statement from [REDACTED] indicating that he is treating the applicant's spouse for depression and anxiety, and has prescribed Zoloft. However, the statement from [REDACTED] is not sufficiently probative to establish that the applicant is suffering extreme emotional hardship. The AAO notes that the record does not establish [REDACTED] as a mental health practitioner and that his conclusions regarding the applicant's spouse appear to have been reached on the basis of a single office visit. Accordingly, the AAO finds his conclusions regarding the applicant's spouse's mental health to be speculative and of diminished value to a determination of extreme hardship.

While the AAO acknowledges the statements of the applicant's spouse's family concerning her emotional suffering, such statements are insufficient proof of extreme hardship in the absence of documentary evidence. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). The AAO also notes the statement from the applicant's cousin who reports that the applicant's spouse is ill and unable to work. However, it again finds no objective evidence in the record that supports this claim. The AAO also observes that the applicant's daughter is not a qualifying relative in this proceeding and that the record fails to demonstrate how any hardship she is experiencing as a result of her father's exclusion is affecting her mother, the only qualifying relative.

The applicant's spouse also indicates that she has been unable to meet her financial obligations without the applicant. However, there is no evidence in the record that details her income, her financial obligations, or her ability or inability to meet those obligations. 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)). As such, the record does not establish that the applicant's spouse is experiencing financial hardship.

As noted above, a determination of extreme hardship should include a consideration of the impacts of relocation on the applicant's qualifying relative. Neither the applicant nor his spouse has asserted any impacts on the applicant's spouse if she were to relocate with the applicant. 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 would face extreme hardship if her husband is refused admission. The AAO recognizes that the applicant's spouse would experience difficulties if the applicant is found to be excludable. The record, however, does not distinguish the hardship she would experience 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.