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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

H2

FILE: [redacted] (CDJ 2004 598 116) Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: JAN 07 2010

IN RE: [redacted]

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:

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

Perry Rhew
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 claims two U.S. citizen children. 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 November 17, 2006.

On appeal, counsel for the applicant states that the applicant's spouse would suffer extreme hardship if the applicant's waiver is denied and that his application should be approved.

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 1998, and remained until he departed voluntarily in January 2006. As the applicant has resided unlawfully 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 or his children 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. S*ee 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, counsel's brief; statements from the applicant's spouse; a statement from [redacted], which indicates that the applicant's spouse is being treated for depression and anxiety; and a copy of a statement from [redacted] that establishes that one of the applicant's children was in the hospital with diarrhea while in Mexico.

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

On appeal, counsel asserts that the applicant's spouse is suffering from depression, and that the lack of emotional, financial and physical support from the applicant is resulting in extreme hardship for her. Counsel also contends that being a single parent for three children has been extremely challenging for the applicant's spouse. She further asserts that the applicant's spouse is having

trouble paying the mortgage, and that the economic and social disruptions experienced by the applicant's spouse rise above those normally associated with removal.

There is insufficient evidence in the record to support counsel's assertions. The record contains a brief statement from a U.S. doctor who indicates that she is treating the applicant's spouse for depression and anxiety. While the AAO acknowledges this information, it notes that the statement from [redacted] is limited to two sentences and fails to indicate the basis or process through which she reached her mental health diagnosis, the severity of the depression and anxiety being experienced by the applicant's spouse, how it affects the applicant's spouse's ability to function in the applicant's absence; the type of treatment she is administering to the applicant's spouse, the length of time she has treated the applicant's spouse or her prognosis for the applicant's spouse. In the absence of such information, AAO finds [redacted] medical statement to be of limited evidentiary value to a determination of extreme hardship.

The record also fails to offer proof of financial hardship. There are no employment records, no pay stubs or W-2 forms, and no copies of mortgage payments, bills, tax documentation or bank account statements to support counsel's assertions that the applicant is experiencing financial hardship. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. **The 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). As such, the record does not establish that the applicant's spouse would experience extreme hardship if the applicant were excluded and she were to remain in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. Counsel notes that one of the applicant's children became ill from the food and water in Mexico while visiting the applicant and had to be hospitalized. A letter from a [redacted] establishes that [redacted] was hospitalized for diarrhea while in Mexico. Counsel also asserts that the applicant's spouse has a child from a previous relationship whose father would not allow her to relocate to Mexico and that separation from this child would contribute to the applicant's spouse's depression. The applicant's spouse asserts she does not want to relocate her children to Mexico because the educational opportunities are much better in the United States.

The AAO notes that the record does not contain documentation that establishes that the applicant and his spouse have children or that his spouse has a child from a previous relationship. Neither does it include documentation, e.g., a custody agreement, that supports counsel's claim that the biological father of the applicant's spouse's oldest child would not allow her to relocate to Mexico. Moreover, hardship to an applicant's children is not, as previously noted, relevant to a determination of extreme hardship in 212(a)(9)(B) proceedings, except as it affects a qualifying relative. In that the record does not establish that the applicant has children or demonstrate how any hardships they might experience would affect the applicant's spouse, the only qualifying relative, the AAO does not find the applicant to have established that his spouse would suffer extreme hardship if she were to relocate to Mexico.

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 he is refused admission. The AAO recognizes that the applicant's spouse will experience hardship as a result of the applicant's inadmissibility. The record, however, does not distinguish her hardship from that commonly associated with removal and exclusion, and 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.