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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

[redacted]

FILE: [redacted] Office: MEXICO CITY, MEXICO Date: JAN 07 2010
(CDJ 2004 655 167) (CIUDAD JUAREZ)

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. She 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 her last departure. She is married to a United States citizen and has a lawful permanent resident (LPR) son. She 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 her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 11, 2007.

On appeal, the appliant's spouse states that he wants his family to stay together and that he has health problems and needs the applicant by his side.

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 July 1997 and remained until she departed voluntarily in March 2006. Therefore, the applicant was unlawfully present in the United States for over a year from July 1997 until March 2006, and is now seeking admission within ten years of her 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 her son 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, her spouse and her son; medical documentation detailing the results of a coronary examination for the applicant's spouse; and a statement from [redacted], in Cleburne, Texas.

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

The applicant states that her spouse has diabetes and needs her assistance with insulin shots and monitoring sugar levels in his blood. She also states that her spouse has back problems, cannot lift or move heavy things, and that he receives disability but cannot afford to hire someone to assist him.

She also states that her spouse's family does not live in the area and cannot help out, and that without her, her spouse is a single parent for her minor son.

The record includes medical documentation from a cardiovascular evaluation of the applicant's spouse. While most of the documentation is in the form of test results that the AAO is unqualified to interpret, a letter accompanying the evaluation states that the applicant's spouse has risk factors for coronary artery disease, including diabetes. However, the letter does not report that the applicant's spouse was found to have coronary artery disease.

The record also includes a statement from [redacted] dated March 1, 2006, that establishes that the applicant's spouse was diagnosed with Diabetes Mellitus in July 1997 and that between that date and March 31, 1999, the last time he was seen by [redacted], had a history of poor control over his blood sugar. Based on his knowledge of the applicant's spouse's history, [redacted] surmises that he would need someone to be close to him to help him with insulin or in case his blood sugar drops. While the AAO acknowledges [redacted]'s statement, it also notes that at the time he made it, he had not examined the applicant's spouse in nearly seven years. Accordingly, it does not find this statement to be sufficient proof that the applicant's spouse currently requires assistance with his diabetic condition. The record offers no documentation from any physician or hospital that is treating the applicant's spouse for diabetes regarding his need for a caregiver. Further, there is no evidence in the record, such as pharmacy receipts, prescription notices or hospital records, that corroborates the applicant's assertion that she is her spouse's caregiver. The AAO also notes that the applicant has submitted no documentation to establish that her spouse is disabled or to demonstrate his physical limitations as a result of his disability. 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)).

On appeal, the applicant's spouse states that he wants his spouse to benefit from the opportunities available in the United States and to have a second chance. While the AAO acknowledges the applicant's spouse's sentiment, the record does not demonstrate how the denial of opportunity or a second chance to the applicant would result in hardship to him. In section 212(a)(9)(B) proceedings, hardship to an applicant is not directly relevant to a determination of extreme hardship, except to the extent that it creates hardship for a qualifying relative.

An examination of the record as a whole indicates that, while the applicant's spouse does have diabetes, it does not demonstrate that the absence of the applicant will result in an extreme hardship to him based on that condition. Without further evidence, the record does not establish that the applicant's spouse would experience extreme hardship if the applicant's waiver application is denied and he remains in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. Neither counsel nor the applicant asserts any impacts on the applicant's spouse if he were to relocate with the applicant. As such, the record does not indicate that the applicant's spouse would suffer extreme hardship if he were to join the applicant in 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 husband would face extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's husband will experience hardship as a result of the applicant's inadmissibility. The record, however, fails to distinguish his hardship from that commonly associated with removal and exclusion, 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 her 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 she 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.