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

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[redacted]

JAN 08 2010

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 754 793

IN RE: [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).

Michael Shumway

for 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, [redacted] 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 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 and seeking admission within 10 years of his last departure from the United States. The applicant 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), in order to return to the United States to join his U.S. citizen spouse and three stepchildren.

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the applicant's spouse is suffering from depression as a result of the applicant's inadmissibility. Counsel states that the applicant's spouse has family ties and assets in the United States.

In support of the application, the record contains, but is not limited to, the applicant's spouse's naturalization certificate, a letter from the applicant's spouse, medical documentation related to the applicant's spouse, letters from the applicant's stepchildren, the applicant's stepchildren's birth certificates, a letter from the applicant's sister-in-law, a letter from the applicant's spouse's employer, a letter from the applicant's stepson's school counselor, the applicant's stepson's school progress report, medical documents related to the applicant's father-in-law, the applicant's father's death certificate, and financial documentation.[1] The entire record was reviewed and considered in rendering a decision on the appeal.

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

[1] The record contains a letter from the applicant's spouse and a copy of a home loan statement written in Spanish without corresponding certified English translations. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

> 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 shows that the applicant entered the United States without inspection from August 2000. The applicant remained in the United States until departing in August 2004. The applicant accrued unlawful presence from August 2000 until August 2004. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of his August 2004 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of his last departure.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *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 (BIA) 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 United States 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she 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 reflects that the applicant wed [redacted], a naturalized U.S. citizen, on March 23, 2002. The applicant's spouse had three children prior to her marriage to the applicant. Hardship to the applicant's three stepchildren, [redacted] and [redacted] will be considered insofar as it results in hardship to the applicant's spouse.

On appeal, counsel asserts that the applicant's spouse is suffering from depression due to her separation from the applicant. As corroborating evidence, counsel furnished a document entitled "Certificate to Return to Work" from [redacted] located in Santa Ana, California. The certificate states that the applicant's spouse is suffering from depression. The record also contains evidence of prescriptions for Alprazolam and Colace.

The AAO has reviewed the medical documentation in the record and finds that it fails to indicate whether the diagnosis of depression is the result of an evaluation conducted by a licensed mental health professional. The record does not contain a psychological evaluation that would serve to link the applicant's departure to his spouse's mental suffering. Moreover, the prescription for Alprazolam, which is used to treat anxiety disorders, does not contain the applicant's spouse's name.[2] Finally, the applicant has failed to show the relevance of the prescription stool softener Colace to his spouse's claim of hardship. For these reasons, the AAO cannot conclude that the applicant's spouse has a medical condition that would contribute to a finding of extreme hardship.

The record contains a letter from the applicant's spouse, dated January 8, 2007, which states that she is suffering emotionally without the applicant. She states that the applicant is a role model to her three children and is a big influence in their lives. She states that the applicant helps raise her children and is involved in their activities. She states that she misses not having a husband and her children not having a father. The record contains an "employee warning" letter from [redacted] addressed to the applicant's spouse. The letter states that it is a warning for the applicant's spouse to change her negative attitude at work. The record also contains letters from the applicant's three stepchildren and sister-in-law, which describe the emotional impact of the applicant's departure on their family. Finally, the record contains a letter from [redacted] high school counselor describing the emotional distress [redacted] has suffered from the applicant's departure.

[2] *See* http://www.nlm.nih.gov/medlineplus/

The AAO recognizes that the applicant's spouse and stepchildren are suffering emotionally as a result of their separation from the applicant. Their situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. 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 point made in this and prior decisions on this matter is that 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); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) ("the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.").

Counsel asserts that the applicant and his spouse have a residential purchase agreement and joint escrow. The applicant furnished a copy of this agreement and a home loan statement as corroborating evidence. However, the home loan statement is written in Spanish and does not contain a corresponding certified English translation of the document. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the document is not probative and will not be accorded any weight in this proceeding.

The AAO finds that the record fails to provide a clear picture of the applicant's spouse's financial situation. The notice of appeal was filed on December 12, 2006, over two years after the applicant's departure from the United States. The applicant's spouse failed to demonstrate, on appeal, how she is supporting herself and her three children without the applicant's presence in the United States. There is no documentation in the record of her monthly expenses and income. Nor does the record indicate her source of financial support. 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)). While the applicant's spouse's unsupported assertions are relevant and have been considered, they are of little weight in the absence of supporting evidence. For these reasons, the AAO cannot conclude that the applicant's spouse is suffering from financial hardship due to the applicant's inadmissibility.

Finally, counsel asserts that the applicant's spouse has friends and family in the United States. The record reflects that the applicant's spouse has three U.S. citizen children. She has a 25-year-old daughter, [redacted] a 24-year-old son, [redacted] and an 18-year-old son, [redacted] The record also reflects that the applicant has a U.S. sister, [redacted] and U.S. lawful permanent resident parents, 82-year-old [redacted] and 80-year-old [redacted]. The record contains copies of numerous prescription labels for [redacted] and a copy of the results of his medical tests. However, the record does not contain medical correspondence interpreting the medical tests and providing a diagnosis of his condition(s). Nor does the record indicate whether the applicant's spouse is supporting her parents and adult children. Accordingly, the AAO cannot determine that the applicant's spouse would suffer extreme hardship due to the severance of family ties if she relocated with the applicant to her native country of Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility 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 remains entirely 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.