U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: LOS ANGELES Date: MAR 27 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who 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 readmission within 10 years of his last departure from the United States. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated September 24, 2004.

The record shows that the applicant appeared at CIS' Los Angeles District Office on January 29, 2002. The applicant testified that, on January 21, 1999, he entered the United States without authorized stay and remained in the United States until he returned to Mexico on July 9, 2000. On July 16, 2000, the applicant re-entered the United States. *Airplane Ticket,* dated July 9, 2000. The record reflects that, on February 22, 2001, the applicant filed Form I-485 Application to Register Permanent Residence or Adjust Status (Form I-485), based on an I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse.

On January 29, 2002, the district director issued a request for further evidence to the applicant informing him of the need to file the Form I-601 with supporting evidence. On April 12, 2002, the applicant filed the Form I-601 along with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On September 24, 2004, the district director issued a notice of denial of the application as the applicant was inadmissible because he had been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States, and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, counsel asserts that the district director did not consider all the relevant factors in determining that the applicant had failed to establish extreme hardship. *Applicant's Brief,* dated October 19, 2004.

In support of these assertions, counsel only submitted the above-referenced brief and a supplemental affidavit from [redacted] However, 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:

> (B) 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 record indicates that, on July 16, 2000, after the applicant had remained in the United States for greater than 365 days and returned to Mexico, he re-entered the United States by plane via Los Angeles International Airport from Tijuana Mexico. *Airplane Ticket,* dated July 9, 2000. The record reflects that the applicant claims to have entered the United States without inspection. The AAO notes that not only is the applicant inadmissible for unlawful presence, the applicant may also be subject to other grounds of inadmissibility such as sections 212(a)(6)(C)(i) and 212(a)(6)(C)(ii) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(6)(C)(ii). However, the AAO is unable to make a determination in regard to additional grounds of inadmissibility using the current record.

The district director based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admitted unlawful presence in the United States for more than one year. Counsel does not contest the district director's determination of inadmissibility.

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. Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision.

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 at 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 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. *Supra.* at 566. The BIA has held:

> 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).

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 statements of counsel as to matters of which they have no personal knowledge are not evidence. *Matter of Obaigbena,* 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 2820 (BIA 1980).

The record reflects that, on April 9, 1999, the applicant married his wife, [redacted] who is a citizen of the United States by birth. The applicant and his spouse have a six-year old daughter and a five-year old daughter who are both U.S. citizens by birth. The applicant was born in Mexico and Mrs. [redacted] parents and siblings are Mexican citizens who subsequently became lawful permanent residents of the United States. [redacted] resided in Mexico between 1976 and 1986, living in Mexico from the age of three until she returned to the United States at age thirteen. The record reflects further that the applicant and [redacted] are in their 30's, and [redacted] has no health concerns.

Counsel asserts that [redacted] would suffer financial hardship if she were to remain in the United States without her husband. Counsel contends that [redacted] would not be able to financially support her and the children because she would be unable to care for them during the day and, due to new conflicting school schedules, [redacted] has quit her position. Counsel contends that, with the applicant removed from the United States, [redacted] would not be able to earn sufficient income and would be unable to attend work because she does not drive. Counsel provides an affidavit from [redacted] to support this assertion. However, the record reflects that [redacted] has previously held a full-time job, from which she derived a yearly income of approximately $18,500.00, while having two children for which she needed to care. Mrs. [redacted] previously employed a babysitter who took care of the children while she and the applicant were unable to do so. Moreover, the record reflects that [redacted] resides in the immediate vicinity of family members who may be able to support her financially and physically, by assisting her with the children and getting her to and from work. The record reflects that [redacted] and the applicant have resided with family members in the past and that the family has obtained financial and physical support from family members as well. The record shows that, even without assistance from family members, [redacted] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *2005 Federal Poverty Guidelines,* http://aspe.hhs.gov/poverty/05poverty.shtml. Moreover, counsel does not argue that Mrs. [redacted] family members are not willing or able to assist in the support of her and the children.

Counsel asserts that [redacted] would suffer emotional hardship if she remained in the United States and her husband returned to Mexico. In support of counsel's contention that [redacted] would suffer severe emotional hardship, he submitted a psychological evaluation, dated April 1, 2002, indicating that Mrs. [redacted] was showing "depressive symptomatology" and was diagnosed with an "adjustment disorder with depressed mood" that, without treatment could grow into a "Major Depressive Disorder." The AAO notes that the psychologist found that there was "no evidence of organicity or psychotic features" " abnormality" in [redacted] thought processes. Additionally, there is no evidence that suffers from a mental disorder that requires her to participate in ongoing psychological care. The psychological evaluation indicates [redacted] has not received psychological treatment or evaluation other than during this one appointment and the psychologist's speculation that the stress factor of the applicant's removal from the United States "can outgrown into a Major Depressive Disorder" is speculative at best. There is no evidence in the record to suggest that [redacted] suffers from a physical or mental illness that would cause her to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Moreover, according to the record, [redacted] has family members, such as her parents and brothers, to support her emotionally in the absence of her husband.

Counsel asserts that the applicant's spouse would face extreme hardship if she relocated to Mexico in order to remain with the applicant. Counsel contends that [redacted] would face extreme hardship because she no longer has any immediate family members in Mexico, it would be an emotional hardship to leave her family in the United States, and the substandard economic situation in Mexico would not afford her the educational, employment, medical and standard of living opportunities that she would have in the United States. Counsel argues that [redacted] situation is similar to that of the extreme hardships faced by the respondent's child in *Matter of Kao & Lin,* 23 I&N Dec. 45 (BIA 2001). [redacted] hardship is distinguishable from the factors utilized in this case because (1) while [redacted] resided in Mexico during her formative years, the U.S. citizen daughter spent her entire life in the United States; and (2) while [redacted] speaks Spanish, the U.S. citizen daughter's language skills were not sufficiently fluent to make an adequate transition to daily life in Taiwan. Moreover, the applicant's family members reside in Mexico and there is no evidence in the record to suggest that these family members could not provide support to the applicant and [redacted] both financially and emotionally. Counsel contends that [redacted] would face financial, educational and medical hardship due to the substandard economy in Mexico. However, the record contains no evidence as to whether [redacted] would suffer any of these hardships, let alone, whether they would rise to the level of extreme hardship. Finally, the AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

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 the applicant were refused admission. Rather, the record demonstrates that [redacted] will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, 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 "*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 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, which meets the standard in section 212(i) of the Act, 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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 an 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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.