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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date: JUN 23 2008

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. § 1182(a)(9)(B).

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. The applicant 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 after April 1, 1997. 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), in order to reside in the United States with her U.S. citizen spouse.

The record reflects that the applicant entered the United States without inspection in July 2000 and remained in the United States until April 2005. The applicant and her spouse, Alejandro Acosta Ramirez, were married in California on October 11, 2001. On November 5, 2001, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. The petition was approved on April 3, 2002. The applicant filed an Application for Immigrant Visa (DS-230) at the U.S. Consulate in Ciudad Juarez on April 13, 2005. On April 18, 2005, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601).

The OIC concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the waiver application accordingly. *Decision of OIC*, dated December 30, 2005.

On appeal, the applicant submits a declaration from [redacted], a self-proclaimed immigration consultant, in which [redacted] summarizes the evidence previously submitted and asserts that the applicant's spouse is suffering extreme hardship as a consequence of separation from his spouse and will continue to suffer extreme hardship if the waiver application is denied. The record also contains letters written in the Spanish language (without accompanying translations as required by 8 C.F.R. § 103.2(b)(3)) apparently from doctors in Mexico; a declaration from the applicant's spouse; a copy of the marriage certificate for the applicant and his spouse; birth and baptismal certificates for the applicant's son; a letter written in the Spanish language (without accompanying translations) from [redacted] and [redacted], the applicant's mother and stepfather respectively; a letter from the applicant's half-brother [redacted]; letters from friends Juan [redacted] and [redacted] a letter in the Spanish language (without accompanying translation) from [redacted] and [redacted]; a letter from [redacted]e, former teacher of the applicant's son; a copy of school class photographs for the applicant's son; receipts for remittances from the applicant to his spouse in Mexico; automobile insurance documents; utility and phone bills; a declaration in the Spanish language (without accompanying translation) from the applicant's spouse; and medical records for the applicant's son. The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (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.
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> . . . .
>
> (v) Waiver. – The Attorney General [now Secretary, 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 reflects that the applicant entered the United States without inspection in July 2000 and remained in the United States until April 2005. The applicant is now seeking admission to the United States. Therefore, the applicant was unlawfully present from July 2000 until April 2005, a period in excess of one year. The applicant has not disputed that she 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 her child is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Moralez,* 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).

In addition, the Ninth Circuit Court of Appeals in reversing the denial of suspension of deportation to the petitioner in *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted), *see also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will be given appropriate weight in the assessment of hardship factors in the present case.

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, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship the applicant is not granted a waiver of inadmissibility.

In his declaration, the applicant's spouse states that he works as a mechanic for $9.50 an hour, and that supporting two households causes him extreme financial hardship. He asserts that he is suffering extreme emotional hardship from being separated from the applicant and their U.S. citizen son, who resides in Mexico with the applicant. The applicant's spouse indicates that his son is often ill, and that he fears for his health in Mexico, though he also states that "[s]o far so good." The applicant's spouse states that he cannot bring his son back to the United States because "a little kid belongs with his mom." The applicant's spouse asserts that he was separated from his mother for most of his childhood, and he does not want his son to endure the same experience.

The AAO recognizes that the applicant's spouse suffers emotionally as a result of separation from the applicant and their son, but the applicant has failed to demonstrate that this hardship, when considered with other hardship factors, is extreme. The applicant's spouse has asserted that he is experiencing financial hardship because he has to support two households, but this hardship cannot be quantified from the evidence submitted. The hardship described by the applicant is the common result of removal or inadmissibility, and it does not rise to the level of extreme hardship based on the record. 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.

Furthermore, the applicant has not demonstrated that her spouse would suffer extreme hardship if he relocated to Mexico. Most importantly, the applicant's spouse has not asserted that he would suffer extreme hardship if he relocated to Mexico. The AAO acknowledges that if he relocated to Mexico, the applicant's spouse would be separated from his mother and siblings and would be forced to leave his job, but the record does not show that the applicant's spouse lives with or supports his mother and siblings, and the applicant has submitted no

evidence demonstrating that her husband would be unable to obtain employment in Mexico. The record shows that although he was born in the United States, the applicant's spouse has spent much of his life in Mexico, where he resided with his father.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 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.