**U.S. Department of Homeland Security**
Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
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**U.S. Citizenship and Immigration Services**

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FILE: [redacted] (CDJ 2003 814010) Office: MEXICO CITY (CIUDAD JUAREZ) Date: APR 21 2009

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

Ellen C. Johnson

John F. Grissom
Acting 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 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 one year or more. 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 reside in the United States with her U.S. citizen spouse, [redacted]

In a decision dated April 28, 2006, the district director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel for the applicant asserted that (1) the applicant received an ineffective decision because pages 3 and 4 of the decision pertain to a different applicant, (2) the director erred as a matter of law because he applied case law relating to applications for permission to reapply after deportation rather than case law relating to waivers, and (3) the director abused his discretion in failing to consider the totality of relevant factors and evidence. Further evidence was submitted in support of the appeal.

In response to counsel's assertion that the applicant received part of a decision meant for a different applicant, on March 6, 2009, the AAO sent to counsel by facsimile a complete copy of the correct decision by the district director. Counsel was informed that she has thirty days from the date of the facsimile to supplement the appeal. As of the date of this decision, the AAO has not received any further communication or submission from counsel. Accordingly, the appeal will be adjudicated based on the record as presently constituted.

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-
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> . . . .
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> (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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> . . . .
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> (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 reflects that the applicant last entered the United States without inspection in April 1999 and remained in unlawful status until April 2005, when she voluntarily departed the United States. Thus, the applicant had accrued more than one year of unlawful presence in the United States, and as she is now seeking admission within 10 years of her last departure from the United States, the director correctly found the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawful permanent resident spouse or parent of the applicant.[1] Hardship to the applicant and her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. 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 (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 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

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[1] It is noted that the director's decision does include references to two cases pertaining to applications for permission to reapply after arrest and deportation rather than to applications for waiver of inadmissibility (*i.e., Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973) and *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978). However, the director's denial of this waiver application was correctly based on an analysis of "extreme hardship" to a qualifying relative pursuant to Section 212(a)(9)(B)(v) of the Act. Accordingly, the AAO does not find persuasive counsel's claim that the wrong case law was applied.

> 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).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("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 therefore 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.

On the Form I-601 filed on May 9, 2005, the applicant listed her U.S. citizen spouse as a qualifying relative. In response to a request for evidence from the director dated November 18, 2005, the applicant submitted the following evidence in support of her claim of extreme hardship to her husband: two affidavits from [redacted] dated March 22, 2005 and December 6, 2005; affidavits from [redacted]'s adult son and daughter, both dated December 6, 2005; a letter from Eastern Regional Academy confirming a learning disability of another son of the applicant's spouse; a letter from the [redacted] confirming the employment of the applicant's spouse; and a letter from [redacted] stating that it would employ the applicant upon her return to the United States.

In denying the application, the director found that the applicant failed to show that extreme hardship exists for a qualifying relative. Specifically, the director observed that the statements from the applicant's spouse describe normal problems associated with separation and do not rise to the level of extreme hardship. The director further noted that possible hardship to the applicant's children is not relevant to the consideration of this waiver application.

On appeal, counsel for the applicant contends that the director abused his discretion in failing to consider the totality of relevant factors and evidence. The applicant submitted additional evidence on appeal, including affidavits dated May 25, 2006 from her husband and from an individual named Ana Osuba, an acquaintance of the applicant and her husband.

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 qualifying relative, her spouse, faces extreme hardship due to the applicant's inadmissibility.

In his March 22, 2005 affidavit, [redacted] stated that he has been married to the applicant since November 2001 and would suffer extreme hardship if she is not permitted to return to the United States. He stated that they "do everything together" and that his children, age 16 to 24, consider her their mother as their biological mother was never there for them. In his December 6, 2005 affidavit, [redacted] stated that he would suffer financially, medically and emotionally if his wife is not permitted to return to this country and he is forced to join her in Mexico. He indicated that he has stable full-time employment and health insurance in the United States, that he is very close to his children and grandchildren who are all U.S. citizens, and that his two younger sons need a lot of time and attention from him as one is currently incarcerated and the other has a learning disability. In his affidavit submitted on appeal, he added that since the denial of his wife's application, he has been "constantly sad and [has] no energy to do anything." He elaborated that he has suicidal thoughts, cannot focus on his work, cries a lot, and eats only at his children's urging. In addition to his previous statements, he added that he needs his medical insurance as he had a heart condition in the past.

[redacted] adult daughter, [redacted], stated in her affidavit that her father has established a life in the United States and would suffer hardship in Mexico. She emphasized that he is close to his children and grandchildren, and that she would be concerned about his health as well as financial well-being if he were to move to Mexico. adult son, [redacted], added in his affidavit that he and his sister consider the applicant to be their mother. He further indicated that his father is the only existing support for his younger brother, who is presently incarcerated. [redacted], the family friend, observed in her affidavit that [redacted] appears very sad and that his children are concerned he would commit suicide.

The AAO recognizes that the applicant's spouse has and will continue to experience hardship without the applicant's presence in the United States. However, the evidence of hardship to the applicant's spouse in the United States consist of general expressions of emotional hardship in [redacted] affidavits and those of his children and friend. Without more, the record fails to demonstrate that [redacted] hardship in the United States would be greater than that typical of individuals separated as a result of removal or inadmissibility, such that it would rise to the level of "extreme hardship." 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); *Matter of Pilch,* 21 I&N Dec. 627 (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). 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. "[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). As it stands, the record does not demonstrate how [redacted] situation, if he remains in the United States, would surpass the circumstances typical to individuals separated as a result of deportation or exclusion and rise to the level of "extreme hardship."

It is noted that [redacted] adult children are not considered qualifying relatives for purposes of a waiver of inadmissibility under 212(a)(9)(B)(v) of the Act. Moreover, the evidence of record is not sufficient to demonstrate that hardship to the children of the applicant's spouse would result in difficulties amounting to *extreme* hardship to the applicant's spouse, as required in connection with this waiver.

Further, although there is no requirement under the statutes or regulations that a qualifying relative must relocate or reside outside of the United States based on the denial of the applicant's waiver request, in order to establish statutory eligibility for a waiver of inadmissibility, the applicant must also establish extreme hardship to her spouse in the event that he relocates with her to Mexico. Here, beyond the general assertions in [redacted] affidavits that he would suffer financial, emotional and medical hardship in Mexico, the applicant has not provided sufficient details of the nature or extent of the hardship her husband would suffer in Mexico, nor is there documentary evidence to support these claims. 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)). As such, the AAO finds that the applicant has failed to establish extreme hardship to her spouse in the event that he relocates with her to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's 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 failed to establish extreme hardship to her U.S. legal permanent resident 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.