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U.S. 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] Office: MEXICO CITY (CIUDAD JUAREZ) Date: APR 24 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 (INA), 8 U.S.C. § 1182(a)(9)(B)(v)

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.

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

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, denied the instant waiver application. The matter 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 husband of a U.S. citizen, the father of a U.S. citizen daughter, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife.

The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The district director also found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application.

On appeal, the applicant's wife asserted that she would suffer extreme hardship if the applicant's waiver application is not approved. Although the applicant did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(9)(B)(i) of the Act provides:

> Any alien (other than an alien lawfully admitted for permanent residence) who –
>
> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or
> >
> > (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.

The applicant indicated, on his DS-230 Biographic Data form, which he signed on April 1, 2005, that he had lived in Bakersfield, California since March 15, 2001, and that prior to March 15, 2001 he lived in Mexico.

The applicant's wife stated, on the Form I-130 Petition for Alien Relative, which she signed on March 22, 2002, that the applicant had last entered the United States, without inspection, during October 2000.

On the Form I-601, the applicant, who signed that document on or about February 3, 2006, indicated that he had entered the United States without inspection and lived in Ontario, California, from April 2001 to July 2001; that he again entered without inspection during July 2001 and lived in Idaho from then until September 2001, and that he lived in California from September 2001 until April 10, 2005. The applicant submitted that application in Ciudad Juarez, Mexico, indicating that he had departed the United States.

On a G-325A Biographic Information form that he signed but did not date, the applicant confirmed that he had lived in Ontario, California from April 2001 to July 2001; in Nampa, Idaho from July 2001 to September 2001; and in Bakersfield, California from September 2001 until the unknown date when he signed that form.

The record contains no indication that the applicant was ever granted any legal status in the United States.

The evidence in the record is sufficient to show that the applicant last entered the United States either on October of 2000, March 15, 2001, April of 2001, or July of 2001, remained unlawfully in the United States until April 10, 2005, and that he has since left the United States. Whichever of those entry dates began the applicant's unlawful presence in the United States, that unlawful presence lasted more than one year. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

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

> The Attorney General [now Secretary of Homeland Security] 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 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See 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 nonexclusive list of factors

relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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. 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 record contains an undated letter from the applicant's wife. That letter is in Spanish without the English translation required by 8 C.F.R. 103.2(b)(3). Because the applicant's wife's statement was submitted without the required translation, its contents shall not be considered.

The record contains the first page of a letter, dated February 24, 2006, in which the applicant's wife stated that being without her husband is difficult for her financially, educationally, and emotionally. She stated that she attempted to live in Mexico with her daughter and her husband, but that, because they could not find work and could not, therefore, afford rental housing, they were obliged to live with his family in a house that was too small. She further stated that each of the two or three times her daughter became ill they had to drive two hours to find a pediatrician. She also stated that the food made her daughter sick numerous times, and that she was not used to washing clothes by hand and cooking big meals. She reported that after three months in Mexico she "started to get desperate and low blood pressure," and became depressed. The provided portion of the letter did not discuss the asserted educational hardship the applicant's wife asserted.

The applicant's wife's assertion that living in Mexico somehow caused her to develop low blood pressure could have been supported by documentary evidence, but was not. Similarly, the assertion that her daughter became sick numerous times and had to be taken to a doctor two hours away could have been documented, but was not. The applicant's wife stated that she and her husband were unable to find work in Mexico, but did not describe the measures they took to find work or provide any evidence of their job search.

Although the statements by the applicant's spouse are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)).

The other hardships asserted, that she was obliged to live in cramped accommodations, to wash clothes by hand, and to prepare large meals are not extreme. Although the applicant's wife describes various hardships, many are insufficiently documented and many are typical of the adjustments expected when a qualifying relative chooses to relocate to a foreign country, and they do not rise to the level of extreme hardship when considered cumulatively.

In another letter, also dated February 24, 2006, which letter was submitted on appeal, the applicant's wife asserted that her hardship is both financial and emotional. She stated that she always feels lonely, anxious, depressed, and unhappy. She also indicated apprehension that her daughter's development will be affected by the applicant's absence. The applicant's wife stated that she is "unable to make a living," fears having to rely on public assistance, and requires the applicant's support, but did not otherwise describe her current financial condition and living arrangements or explicitly detail the financial harm she will suffer if applicant's waiver application is denied. The applicant's wife stated that she does not consider the hardship she related to be normal because, in addition to missing her husband, she worries about him.

As to the applicant's wife's emotional hardship, her loneliness, anxiety, depression, and unhappiness, the applicant's wife provided no evidence that they are greater than the amount one might expect when obliged to live separately from one's spouse. Similarly, although the applicant's wife stated that she is unable to make a living and requires the applicant's support, she provided no evidence from which the AAO can conclude that her husband cannot support her from outside the United States or that her financial difficulties are more serious than one might expect as a consequence of inadmissibility or removal.

The various hardships that the applicant's wife described, although real, are within the ambit of ordinary hardships one might expect to suffer from the removal of a spouse from the United States. 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 wife faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than 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 INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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. 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.