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

U.S. Citizenship and Immigration Services

#3

[redacted]

AUG 03 2009

FILE: [redacted] Office: MEXICO CITY, MEXICO Date:
(CDJ 1998 652 025) (CIUDAD JUAREZ)

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

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 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 and seeking admission within ten years of her last departure. She is married to a Lawful Permanent Resident (LPR) of the United States.[1] 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).

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her LPR spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 26, 2006.

On appeal, counsel for the applicant states that the applicant's spouse is suffering emotionally due to her absence, and refers to a psychiatric examination submitted into the record.

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 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.

[1] **The applicant also asserts she has a United States citizen child.** However, the record does not contain any documentation, such as a birth or naturalization certificate, that establishes that she has a child who is a United States citizen.

The record indicates that the applicant entered the United States without inspection in June 1989 and remained until she departed voluntarily in February 2000. Therefore the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until February 2000, when she departed. As the applicant accrued more than one year of unlawful presence and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Her period of inadmissibility will expire in February 2010.

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 is not directly relevant in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether a favorable exercise of discretion is warranted. S*ee 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she accompanies the applicant or 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 includes, but is not limited to, counsel's brief; statements from the applicant's spouse; pictures of the applicant, her husband and their son; a psychological examination of the applicant's spouse by [redacted]; medical records for the applicant's spouse; and a marriage certificate for the applicant and his spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel asserts that the applicant's spouse is suffering extreme emotional hardship, and refers to a psychological examination by [redacted] a licensed psychologist. The applicant's spouse has submitted two statements, and asserts his health is suffering due to his emotional depression caused by the absence of his wife. He further asserts that he would be unable to find employment in Mexico, and that his family, with the exception of his wife and son, reside in the United States.

The psychological report submitted by [redacted] details the applicant's spouse's allegations of child abuse while growing up, narrates the story of his life with his wife, and states that the applicant's spouse now either spends his time with his son and grandson or watching long hours of television. [redacted] indicates that the "historical information" included in his report reflects the statements of the applicant's spouse. Based on his interview of the applicant's spouse and psychological testing, [redacted] concludes that the applicant's spouse has Adjustment Disorder with Mixed Features of Anxiety and Depression. He indicates that the applicant's spouse's symptoms could become worse whether he stays in the United States or relocates to Mexico to be with his wife as relocation would result in separation from his son and grandson.

While the AAO finds the input of any mental health professional to be valuable, it concludes that in the present case the historical information that, in part, forms the basis for [redacted] conclusions may undermine his evaluation. In letters, dated December 20, 2005 and July 20, 2006, and submitted for the record, the applicant's spouse also reports his personal history. However, the facts of that history, where they can be compared with his testimony to [redacted] differ in significant ways. Discrepancies include, but are not limited to, the history of his relationship with the applicant, the number and location of the children born to him and the applicant, the family's immigration history, and the basis for and circumstances surrounding the applicant's return to Mexico. While the AAO acknowledges that the information provided by the applicant's spouse to [redacted] is much broader in scope than that provided in his letters, it, nevertheless, notes that in those areas where that information can be compared, there are major inconsistencies. As such, these inconsistencies raise doubt about the totality of the applicant's spouse's testimony to [redacted] and diminish his evaluation's value to a determination of extreme hardship.

The applicant's spouse asserts that he has been diagnosed with anemia, arthritis and high levels of cholesterol, but these conditions are not supported with any documentary evidence. Neither is there evidence of any significant financial hardship. Further, the general nature of the country conditions information in the record does not establish that the applicant's spouse would be unable to obtain employment in Mexico and support his family. 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)).

The applicant's spouse asserts that the applicant's continued inadmissibility would prevent their son from returning to the United States to pursue an education. However, as already noted, the record

does not establish that the applicant's son is a United States citizen. Moreover, children are not qualifying relatives in 212(a)(9)(B)(v) proceedings and, as such, any impact on them is relevant to a determination of extreme hardship only to the extent that it imposes hardship on a qualifying relative. In this case, there is no evidence that any hardship experienced by the applicant's son will result in hardship to the applicant's spouse.

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 husband will face extreme hardship if his wife is refused admission. The AAO acknowledges that he will experience hardship as a result of the applicant's inadmissibility. However, the record does not distinguish his hardship from that experienced by other individuals whose spouses have been removed or excluded from the United States. Accordingly, his hardship does not rise to the level of "extreme" as informed by relevant precedent. 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to her LPR 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.