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

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[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: FEB 19 2009

(CDJ 2004752441)

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. He 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 his U.S. citizen spouse.

In a decision dated September 22, 2006, the director concluded that the applicant had failed to establish that his 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 October 24, 2006, counsel for the applicant filed a Form I-290B, Notice of Appeal. In a brief submitted with the Form I-290B, counsel asserts that the applicant's wife would suffer hardship resulting from a combination of medical problems, family separation, and financial difficulties due to the applicant's inadmissibility. The applicant submitted additional evidence in support of his claim on appeal.

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

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 entered the United States without inspection and remained in the United States in illegal status from April 1997 through October 2005, when he left the United States for Mexico. As he had resided unlawfully in the United States for over a year and is now seeking admission within 10 years of his 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 extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant 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 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, the applicant listed his U.S. citizen spouse, [redacted] as his sole qualifying relative. The applicant submitted an undated letter from [redacted] copies of photographs of the applicant and his spouse, copies of a bank statement and various utility bills, and copies of [redacted] medical records from Advanced Women's Healthcare, P.N.C., Inc. In her letter, [redacted] described her emotional attachment to her husband and indicated that she also depended on her husband financially. In addition, [redacted] stated that she was undergoing fertility treatment so that she and the applicant could start a family, and in order to do so, she needed her husband to remain with her in the United States. The medical records submitted into evidence appear to be test results and notes covering [redacted] visits to that facility between February and April 2005. The records contain no explanation from a medical professional regarding the nature of [redacted] medical condition and the treatment that she received during that period of time.

In denying the application, the director found that the applicant has failed to show that extreme hardship exists for a qualifying relative. Specifically, the director observed that the medical records do not show that the applicant's wife is unable to care for herself or that the applicant's presence is necessary for her to function normally. The director further concluded that the problems described by the applicant's spouse are those normally associated with separation and do not rise to the level of extreme hardship.

On appeal, counsel asserts that denial of the applicant's waiver application would result in extreme hardship to the applicant's spouse. Counsel maintains that [redacted] infertility is a medical problem for which she is unable to receive treatment while her husband is outside of the United States. Counsel states that [redacted] is also going through financial problems because of her current separation from her husband. Counsel further asserts that [redacted] has no ties at all to Mexico and likely would be unable to support herself there. The applicant submits on appeal an additional declaration from his wife, dated September 16, 2006. In this declaration, [redacted] credited her husband with helping her recover from her alcohol addiction. She further discussed her infertility, stating that she was receiving treatment, but had to discontinue the treatment when she and her husband went to Mexico in October 2005 for his immigration interview. She stated that without her husband she was experiencing financial hardship and has had to sell her mobile home and move in with relatives. Other documents submitted on appeal include copies of [redacted] birth certificate and their marriage certificate; a letter from an administrator of Advanced Women's Healthcare confirming that [redacted] was a patient at the facility in February and March 2005 to treat her infertility; a copy of a handwritten agreement documenting the sale of her mobile home; and declarations from [redacted] employer, confirming her employment, and from friends and acquaintances attesting to the stress [redacted] is experiencing in connection with the separation from 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, his spouse, faces extreme hardship due to the applicant's inadmissibility.

The applicant's wife claimed that one aspect of the hardship she would suffer due to her husband's absence from the United States is her inability to continue her fertility treatment. However, the AAO finds that the evidence of record is insufficient to substantiate [redacted] claim regarding her medical condition and the treatment for such condition. As previously noted, the medical records from Advanced Women's Healthcare consisted of abbreviated test results and handwritten notes dated between February and April 2005 without any statement from a medical professional explaining the exact nature of her condition and the treatment recommended to or received by Mrs. [redacted] The October 2, 2006 letter from the same medical facility submitted on appeal was written by an administrator, not a medical professional, and again is vague and lacking in detail regarding [redacted] medical condition and treatment. The letter confirms only that the applicant's wife visited the facility in February and March 2005 to "treat infertility," and that "in order to continue treatment, [her] husband/partner must be available and living locally." The AAO notes that the applicant and his wife did not leave for Mexico until October 2005. The record contains no evidence showing that, assuming the condition continued to exist, treatment was continued after March 2005. In light of the foregoing, the AAO cannot conclude that there is sufficient evidence to show that the applicant's wife suffers from a significant health condition that would be negatively impacted by the applicant's absence.

The applicant's wife further asserted that her husband's bar to admission is causing her significant financial hardship. The only documents in the record pertaining to [redacted] financial status are (1) a declaration, purportedly from her employer, confirming that her current wages is $8.00/hour, and (2) an agreement documenting the sale of her mobile home. Theses documents alone are insufficient to demonstrate how [redacted] is experiencing financial hardship. Further, the record lacks any evidence showing how the applicant's presence in the United States would alleviate his wife's claimed financial hardship. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. *See 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 AAO notes that there is no statutory or regulatory requirement that a qualifying relative must relocate or reside outside of the United States when the applicant's request for a waiver of inadmissibility is denied. However, in order to establish statutory eligibility for a waiver, the applicant must also establish extreme hardship to his spouse in the event that she relocates with him to Mexico. Based on the record, the applicant's wife does not appear to consider moving to Mexico with the applicant to avoid the hardship of separation a viable solution. In her letter, Mrs. Jimenez indicated that she would not be able to find work to support herself financially in Mexico. However, without some documentary evidence of the lack of employment opportunities or lower pay in Mexico, her statements are of insufficient evidentiary value. Moreover, economic detriment, including the loss of employment and the inability to maintain a standard of living or to pursue a chosen profession, is not uncommon when individuals relocate outside the United States to join

family members and, therefore, does not constitute extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627, 630 (BIA 1996).

The AAO recognizes that the applicant's spouse will suffer as a result of the applicant's departure from the United States. However, the record does not demonstrate that her hardship 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).

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 his 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.