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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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[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: JUL 06 2009

CDJ 2004 808 456

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. §§ 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 Grissom

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, [redacted], 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 more than one year and seeking admission within 10 years of her last departure from the United States. 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 return to the United States to join her U.S. lawful permanent resident spouse, [redacted]

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her U.S. lawful permanent resident spouse, and denied the Application for Waiver of Ground of Excludability (now referred to as Inadmissibility) accordingly.

On appeal, the applicant furnished a letter from her spouse. [redacted] asserts that his separation from the applicant is a cause of stress for him because he has also been separated from his U.S. citizen son, who is residing in Mexico with the applicant. [redacted] indicates that his son is growing up in two different countries. He maintains that the uprooting of his son is a significant disruption to his son's overall well-being. The entire record was reviewed and considered in rendering a decision in this case.

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.

Time in unlawful presence begins to accrue on April 1, 1997, the date of enactment of unlawful presence provisions under the Immigration and Nationality Act. In the present application, the record reflects that the applicant entered the United States from Mexico without inspection in June 1994. The applicant resided in the United States until she voluntarily departed to Mexico in June 2000. Consequently, the applicant accrued unlawful presence for a period of three years prior to her departure from the United States. The applicant is seeking admission within ten years of her June 2000 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 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 United States 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).

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 reflects that the applicant wed a U.S. lawful permanent resident, on May 4, 1994. is a qualifying family member for section 212(a)(9)(B)(v) of the Act

extreme hardship purposes. The applicant and [redacted] have a fourteen year old U.S. citizen child, [redacted]. Hardship to [redacted] will be considered insofar as it results in hardship to [redacted]

On appeal, [redacted] asserts that his separation from the applicant is a major cause of stress for him because he has not had the chance to be a full-time father to his son. He states that he was unable to work and care for his child so he sent his son to Mexico to live with the applicant. [redacted] contends that to uproot his son at this stage of his education and social development is a significant disruption to his overall well-being. He maintains that his son's education is interrupted because of the lack of proper understanding of the material presented by the instructors. [redacted] states that all of his family and social circles are in the United States. He contends that for his son to remain in the United States, the applicant would have to help with his upbringing. *Statement of* [redacted] dated August 1, 2006.

The record reflects another statement from [redacted] that was initially furnished with the applicant's waiver application. In this initial statement, [redacted] asserts that he has missed five years of his son's life. He states that he sees his son only when he goes to Mexico for a visit. Mr. [redacted] contends that life in Mexico is very hard and he has to work in Los Angeles to provide for his family. He indicates that he wants his son to have an education and go to school in the United States. [redacted] states that he misses his wife and needs her company and advice. *Statement of* [redacted] dated November 5, 2005.

The AAO notes that the aforementioned statements address the hardship that the applicant's child would suffer if the applicant were refused admission. Section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant's child. In the present case, the applicant's spouse is the only qualifying relative under the statute, and the only relatives for whom the hardship determination is permissible. Hardship to the applicant's son will be considered insofar as it results in hardship to the applicant's spouse.

The AAO recognizes that the applicant's spouse will continue to suffer emotionally as a result of separation from the applicant. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While, in common parlance, the prospect of separation or involuntary 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 did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. 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).

Furthermore, the applicant has not established that her spouse would suffer extreme hardship if he accompanied her to Mexico. In *Matter of Cervantes-Gonzalez*, the BIA noted that the respondent's wife spoke Spanish and the majority of her family was originally from the respondent's country of citizenship, Mexico. The BIA stated that based on these factors the respondent's wife "should have less difficulty adjusting to live in a foreign country." The record in the present case shows that the applicant's husband is a national and citizen of Mexico. He became a temporary resident of the United States on June 28, 1988, when he was 26 years old. Thus, he should have less difficulty in readjusting to language, culture and residence in Mexico. [redacted] stated that he has to work in Los Angeles to provide for his family. However, he did not discuss his current occupation, and the reasons he would be unable to find employment in Mexico. He further stated that all of his family and social circles are in the United States. Although family and social ties to the United States are factors to be considered in a hardship determination, [redacted] has not discussed and documented his relationship with his family members. There is no indication of where his family members reside in the United States, their current immigration status, and whether they would be able to visit him if he moved to Mexico. Given this lack of detail and a lack of documentation to substantiate the assertions made by the applicant's spouse, the applicant has not demonstrated that her spouse would suffer extreme hardship if he accompanied her to Mexico.

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband, [redacted] faces extreme hardship if the applicant is refused admission to the United States. 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 remains entirely 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.