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U. S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 754 655

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:

[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).

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. 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 more than one year and seeking admission within 10 years of his 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 his United States citizen wife, [redacted]

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (now referred to as Inadmissibility) accordingly.

On appeal, the applicant furnished an additional letter from his spouse. The entire record, which includes letters from the applicant's spouse, stepdaughters, friends and a former employer, was reviewed and considered in rendering this decision.[1]

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

[1] The AAO notes that the applicant's spouse furnished with her letter a copy of a newspaper article written in Spanish without an accompanying English translation. Because the applicant failed to submit a certified translation of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

> 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.

In the present application, the record reflects that the applicant entered the United States from Mexico without inspection in March 2001. The applicant resided in the United States until he voluntarily departed to Mexico in May 2005. Consequently, the applicant accrued unlawful presence for a period of over four years prior to his departure from the United States. The applicant is seeking admission within ten years of his October 2005 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 himself 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 naturalized U.S. citizen, on January 7, 2004. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and her spouse have a four year old U.S. citizen child, [redacted], and a six year old U.S. citizen child, [redacted] Hardship to the applicant's children will be considered insofar as it results in hardship to the applicant's spouse.

The applicant's spouse asserts in her letter, dated August 1, 2006, that she needs the applicant to help her raise and support their children in the United States. She states that because of the economy she would have to acquire two jobs to pay rent, utility bills, transportation, clothing, food, child care, and child support payments to her children from her previous marriage. She indicates that this would be a burden on her because her children would never be able to spend time with her and they would feel abandoned. She notes that she does not want to be in a government system of living on financial assistance. She asserts that if the applicant's waiver application is not approved, her children would not see him for ten years. She states that she cannot afford to make trips to Mexico.

The AAO will consider financial hardship as a factor contributing to extreme hardship. However, in the present case, sufficient documentation has not been provided to demonstrate the applicant's spouse's financial situation. Relevant documentation would include evidence of the applicant's spouse's annual income and expenses and her assets and liabilities. Further, there is no indication of how the applicant's spouse is managing her household expenses now that the applicant is in Mexico. The AAO notes that the record reflects the applicant was employed in construction and landscaping. However, the record does not contain any information related to his earnings. This information is necessary to assess the loss of income that resulted from the applicant's departure from the United States. Finally, the applicant's spouse, who resides in southern California, has not described the travel expenses related to visiting the applicant in Mexico. 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)). Although the applicant's spouse's unsupported assertions are relevant and have been considered, they can be afforded little weight in these proceedings.

The applicant's spouse asserts that in Mexico it is very difficult to find a job, the rate of pay is low, housing is expensive, and schools are poor. She contends that she does not want to live in Mexico because of the high crime rate. The record reflects that the applicant made similar assertions in the letter she initially filed with the waiver application, dated November 18, 2005. In that letter, she notes that she resided with the applicant in Mexico for five months. She asserts that where her husband resides there are drugs and a high risk of violence and kidnapping. She notes that she has three daughters from her prior marriage who reside in the United States. She states that her younger daughter is diabetic. She indicates that when she resided with the applicant Mexico, it was difficult for her to deal with the separation from her daughters. The record contains an undated letter from the applicant's daughter, [redacted] stating that she missed her mother during their separation.

The AAO finds that these assertions do not contribute to an extreme hardship determination. Although the applicant's spouse asserts that there is a high rate of crime and lack of employment opportunities in

Mexico, she has not indicated where she resided when she lived with the applicant in Mexico. Nor has she described how her lifestyle was affected by crime in Mexico. Further, there is no indication of whether she sought employment in Mexico and the type of employment opportunities available to her in Mexico. The record reflects that the applicant's spouse submitted a letter, dated November 18, 2005, which states that the applicant is working in Mexico with his brother in his own business. However, the record provides no information on the type of business he owns, and whether he has the financial means to support the applicant in Mexico. Second, the applicant's spouse contends that she does not want to move to Mexico because she will be separated from her children from her previous marriage. Her letter, dated August 1, 2006, states that she sends child support payments for the children, indicating she does not have primary custody of them. There is no documentation in the record to demonstrate the children's ages, her custody agreement, and the location of where they reside. Nor is there any discussion of whether they would be able to visit her in Mexico should she decide to reside there. Finally, the applicant's spouse has not provided any medical documentation regarding her daughter's diabetes. She has not indicated which of her child has diabetes and has not demonstrated how her residence in Mexico would impact her child's illness. For these reasons, the AAO finds that the applicant's spouse has not demonstrated that she would suffer extreme hardship if she accompanied the applicant to Mexico.

The AAO recognizes that the applicant's spouse is suffering emotionally as a result of her separation from the applicant. Her 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. 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 exists. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond 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).

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 wife 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 he merits a waiver as a matter of

discretion. Accordingly, the letters from the applicant's stepdaughters, friends and former employer, which solely address his good character, will not be discussed in these proceedings.

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.