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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

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[redacted]

FILE: [redacted] Office: MEXICO CITY, MEXICO Date: JUL 31 2009
(CDJ 2004 612 258) (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 naturalized United States citizen. 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 U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 10, 2006.

On appeal, counsel for the applicant states that the applicant's husband is suffering financially and emotionally due to her absence.

On appeal, counsel for the applicant requests the opportunity to make an oral argument regarding the issues in this case. Regulation, however, requires the requesting party to explain in writing why an oral argument is necessary. Further, United States Citizenship and Immigration Services (USCIS), which has the sole authority to grant or deny a request for oral argument, will grant such argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, counsel has identified no such factors or issues, nor offered any specific reasons why oral argument should be held. The AAO finds the written record of proceedings to adequately represent the facts and issues in this case and, consequently denies the request for oral argument.

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.

The record indicates that the applicant entered the United States on July 4, 1997, with a valid border crossing card and was issued a Form I-94 authorizing her to remain until January 3, 1998. However the applicant did not leave the United States when her Form I-94 expired. She remained until she departed voluntarily in May 2005. As the applicant accrued unlawful presence of more than one year 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.

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 or her children 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 an 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 counsel's brief, statements from the applicant's spouse, daughter, son and other family; family photographs; statements from [redacted] asserting the applicant's son and daughter are being treated for depression and taking Zoloft; a marriage certificate for the applicant and her spouse, as well as a naturalization certificate for the applicant's husband..

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

In his statement, the applicant's spouse asserts that his wife is lonely in Mexico and that it has been difficult to visit her because he must pay the bills and cannot afford to miss work. He also states that the applicant's son and daughter need her. The applicant's son and daughter both report how much they miss their mother and that they need her to return to the United States. To establish the impact of the applicant's absence on her children, the record provides statements from [redacted] both dated July 13, 2006, that indicate he is treating both siblings for anxiety and depression, and has prescribed Zoloft.

The AAO acknowledges the statements from the applicant's family with regard to them missing the applicant while she resides in Mexico, as well as the statements from [redacted]. However, the record does not contain sufficient evidence that the applicant's spouse or other family is experiencing any emotional impact above that normally experienced by the relatives of excluded aliens. The brief statements prepared by [redacted] neither indicate the basis on which he reached his diagnosis of the applicant's children, nor indicate the severity of their conditions or how it affects their ability to function on a daily basis. The AAO would also note that the applicant's son and daughter are not qualifying relatives for the purposes of a 212(a)(9)(B)(v) waiver proceeding and the record fails to demonstrate how any hardship they might suffer in the applicant's absence would affect the applicant's spouse. Moreover, the record also lacks documentation that establishes the applicant as the mother of a son and daughter.

Counsel asserts that the applicant may have breast cancer and lives a great distance from any Mexican facility able to provide treatment. He contends that the applicant is working to meet both his needs and those of the applicant in Mexico, but that it has become an extreme hardship for him, both financially and emotionally. The record, however, does not contain documentary evidence that establishes the applicant has been diagnosed with breast cancer. Further, it fails to document the financial and emotional hardship that counsel claims the applicant's spouse is experiencing. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. **The assertions of counsel do not constitute evidence.** *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the record does not demonstrate that the applicant's spouse would suffer extreme hardship if he remained in the United States.

As previously discussed, a determination of extreme hardship should include a consideration of the impacts of relocation on the applicant's qualifying relative. Neither counsel nor the applicant has asserted that relocating to Mexico would constitute extreme hardship for the applicant's spouse. As

such, the AAO is unable to find that the applicant's spouse would suffer extreme hardship if he were to join the applicant in Mexico.

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 would face extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's husband will experience hardship as a result of the applicant's inadmissibility. The record does not, however, distinguish his hardship from that commonly associated with removal and separation, and it, therefore, 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 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.