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U.S. Department of Homeland Security
20 Massachusetts Ave., NW., Room 3000
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U.S. Citizenship and Immigration Services

[redacted]

H3

FILE: [redacted] Office: CIUDAD JUAREZ Date: MAR 20 2009
(CDJ1998772577)

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:

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).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Ciudad Juarez, 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 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 her lawful permanent resident spouse, [redacted], and their children, two of whom are U.S. citizens.

In a decision dated April 10, 2006, the OIC concluded that the applicant had failed to establish that her 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 appeal, the applicant asserted that the director failed to consider all relevant information provided by her husband to demonstrate the hardship he would suffer if the applicant is not allowed to return to the United States. The applicant submitted additional evidence 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-
>
> > (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 reflects that the applicant last entered the United States without inspection in March 1998 and remained until November 2001, when she voluntarily departed the United States. Thus, the applicant had accrued more than one year of unlawful presence in the United States, and as she is now seeking admission within 10 years of her last departure from the United States, the OIC 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 an 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 and her children 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 filed on June 1, 2005, the applicant listed her U.S. lawful permanent resident spouse as a qualifying relative. The record also shows that the applicant and her spouse have two U.S. citizen children. The only evidence submitted with the Form I-601 in support of the applicant's hardship claim are two letters from her husband, one dated December 8, 2005 and one undated. It is noted that both letters were written in Spanish, and no English translation of the letters were provided.

In denying the application, the OIC found that the applicant has failed to show that extreme hardship exists for a qualifying relative. Specifically, the OIC observed that the statements from the applicant's spouse describe normal problems associated with separation and do not rise to the level of extreme hardship. Further, the OIC noted that possible hardship to the applicant's children is not relevant to the consideration of this waiver application.

On appeal, the applicant asserted that the director failed to consider all the relevant information provided by her husband to demonstrate the hardship he would suffer if the applicant is not allowed to return to the United States. The applicant submitted additional evidence on appeal."

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, her spouse, faces extreme hardship due to the applicant's inadmissibility. The applicant submitted a statement in English from her husband, dated May 8, 2006, and two handwritten letters in Spanish dated May 1, 2006 and May 5, 2006, without English translation. The applicant also submitted copies of the birth certificates of their four children (including a son born in Mexico in 1987, a daughter born in Mexico in 1991, a daughter born in the United States in 1995, and a son born in the United States in 1997), a letter from Mr. [redacted] church, and the children's school registration and vaccination records.

First, it is noted that because the applicant failed to provide certified translations of the letters from the applicant's husband that were submitted prior to the OIC's decision and the two letters submitted on appeal, the AAO cannot determine whether such evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, such evidence is not probative and will not be accorded any weight in this proceeding.

In his letter submitted on appeal, the applicant's spouse stated that in his wife's absence, he has been essentially a single parent. He stated that his role has become increasingly difficult as his daughters grow older and require their mother's attention. The applicant's husband also expressed generally his emotional need for the applicant. In addition, he indicated that although he has always been the family's provider, without his wife, he has had to bear the additional financial burden of securing childcare for his children so that he can work.

The AAO recognizes that the applicant's spouse has and will continue to experience hardship without the applicant's presence in the United States. However, beyond the general assertions in her husband's letter, the applicant has not provided sufficient details of the nature or extent of the hardship her husband would suffer, nor is there documentary evidence to support these claims. 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)).

Further, the record does not demonstrate that 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). As it stands, the record does not demonstrate how [redacted] situation, if he remains in the United States, would surpass the circumstances typical to individuals separated as a result of deportation or exclusion and rise to the level of "extreme hardship."

The AAO also recognizes that the applicant's minor children are experiencing hardship without their mother. However, as previously noted, the applicant's children are not considered qualifying relatives for purposes of a waiver of inadmissibility under 212(a)(9)(B)(v) of the Act. Moreover, the evidence of record is not sufficient to demonstrate that hardship to the children would result in difficulties amounting to *extreme* hardship to the applicant's spouse, as required in connection with this waiver.

Finally, as noted above, there is no requirement under the statutes or regulations that a qualifying relative must relocate or reside outside of the United States based on the denial of the applicant's waiver request. However, to establish statutory eligibility for a waiver of inadmissibility, the applicant must also establish extreme hardship to her spouse in the event that he relocates with her to Mexico. Neither the applicant nor her husband has made any claim or submitted any evidence with respect to hardship to her husband in the event he join her in Mexico. As such, the AAO finds that the applicant has failed to establish extreme hardship to her spouse in the event that he relocates with her to Mexico.

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 her U.S. legal permanent resident 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.