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U.S. Department of Homeland Security
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: PHOENIX, ARIZONA Date: MAR 31 2009

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, and 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. 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), in order to reside in the United States with her U.S. citizen spouse and two U.S. citizen children.

On December 5, 2006, the district director issued a decision denying the application for waiver, concluding that the applicant has failed to establish that extreme hardship would be imposed on a qualifying relative should she be removed from the United States.

The applicant filed a Form I-290B, Notice of Appeal, on January 3, 2007. The applicant contends that the U.S. Citizenship and Immigration Services (USCIS) failed to fairly consider her hardship evidence, specifically hardship to her children and the impact that may have on her spouse, and hardship in the event he relocates to Mexico. She further contends that the USCIS "failed to exercise its discretionary authority and instead used an extremely high burden of proof standard." The applicant submitted several new items of evidence and resubmitted evidence previously provided with the Form I-601.

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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> . . . .
>
> (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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> . . . .
>
> (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.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant entered the United States in March 2001 as a B2 nonimmigrant visitor with an authorized stay of six months and proceeded to remain in the United States in unlawful status until October 2003, when the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. In 2004, the applicant departed and reentered the United States on a Form I-512, Authorization for Parole of an Alien into the United States. The proper filing of an affirmative application for adjustment of status has been designated by the Secretary as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by* [redacted]*, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* In applying to adjust her status to that of lawful permanent resident, the applicant is seeking admission within 10 years of her departure from the United States. As she had resided unlawfully in the United States for over a year and is now seeking admission within 10 years of her 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 waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant or to 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. Once extreme hardship to a qualifying relative 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 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 her Form I-601, the applicant indicated that she is claiming eligibility for a waiver through her husband, [redacted], who is a citizen of the United States. The applicant also listed on the Form I-601 two U.S. citizen children. Along with the Form I-601, the applicant submitted, among other things: (1) a declaration from her husband dated March 23, 2006; (2) undated letters from [redacted], Licensed Psychotherapist, and J[redacted] of the Arizona Family Resource/Counseling Center, regarding [redacted] mental health; (3) a letter dated February 20, 2006 from [redacted]s employer [redacted], confirming his employment and a number of certificates and commendation letters relating the [redacted] job experience and performance; (4) financial documentation, including the 2005 U.S. Income Tax Return for Mr. and the applicant, [redacted] 2005 Form W-2, a number of credit card bills, and documentation from a mortgage broker showing that has been pre-approved for a mortgage loan since May 2005, and (5) letters dated January and February 2006 from teachers and the president of the [redacted] where the applicant's children attend, describing the applicant's involvement in her children's classrooms and school activities.

With respect to hardship, [redacted] stated in his declaration that denial of his wife's adjustment of status application would "devastate [his] life, [his] children's future and [his] marriage." He stated that with his current employment, he is able to provide his family with housing, health insurance and economic benefits, of which his children would be deprived if they were to go to Mexico with the applicant. He further stated that the applicant is primarily responsible for the children's education and well-being, and without her, he would not be able to take care of the children and work at the same time. He asserted that if the applicant departed the United States, he and the children would be forced to follow her and to live in the town of [redacted], a town best known for drug trafficking and prostitution. He indicated that if the applicant and their children must leave the United States, he would "have to choose between providing for them in Mexico [and] filing for bankruptcy."

In her letter, [redacted] described generally family situation and stated that he came to her for counseling "due to extreme anxiety that disrupted his sleep, concentration and general functioning" and that "he had been unable to perform his regular everyday functions without much

effort due to constant worry about the future." She indicated he also expressed concern about the mental health of his wife. She indicated that [redacted] saw her on February 2 and 22 and March 1 of 2006, and that he has been placed on a prescription sleep aid and an antidepressant. She stated that he has improved but "the resolution of the issue is the only true "cure."

[redacted] stated in his undated letter that [redacted] came to his office for an evaluation on February 15, 2006, "with symptoms of depression and anxiety, complaining of lack of energy, low interest, tearfulness, hopelessness, worthlessness, disruption in sleep and appetite" due to stress relating to work and to his wife's situation. Mr. [redacted] indicated that [redacted] was prescribed Lexapro for depression and anxiety and Trazodone for insomnia "with some initial benefit reported."

In denying the application for waiver of inadmissibility, the district director noted that the record lacked evidence to support the claim by the applicant's spouse that without the applicant's presence in the United States, he would not be able to care for their children and work at the same time. The director further found that the applicant has not demonstrated that the applicant's spouse would suffer extreme hardship if he were to relocate to Mexico. The director observed that the applicant's husband gave no reason, and provided no evidence, for the claim that if he and the children were to relocate to Mexico, the entire family would be forced to live in Sonora, Mexico. The director further found that the evidence does not show that the applicant's spouse would be unable to obtain gainful employment, or that the family would experience financial hardship, in Mexico. Further, the director noted that the applicant's spouse had spent a significant part of his life in Mexico, and has no health problems for which he could not receive medical care abroad.

On appeal, the applicant contends that USCIS failed to fairly consider her hardship evidence, specifically hardship to her children and the impact that may have on her spouse, and hardship in the event he relocates to Mexico. The applicant contends that hardship on young children has a very direct impact on the parents, and that her husband suffers knowing that the children are suffering. With respect to hardship her husband may experience in Mexico, the applicant points out that all of her husband's family is in the Untied States and that the region in Mexico where her husband would have to relocate is economically depressed. She further contends that the USCIS "failed to exercise its discretionary authority and instead used an extremely high burden of proof standard." The applicant submits evidence previously provided and several new items, including: (1) a letter from [redacted], which appears to be an abbreviated version of the previous letter; (2) a letter from the applicant's young son dated December 18, 2006, and (3) an article from the Arizona Republic, dated December 10, 2006, relating to economic hardship in Mexico.

Upon review, the AAO finds that there is insufficient evidence to support the conclusion that the applicant's spouse would experience extreme hardship as the result of the applicant's inadmissibility to the United States.

The AAO recognizes that [redacted] will experience considerable hardship as a result of his wife's inadmissibility in the United States. However, 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 his concern regarding the needs of his children and the difficulties they would face if their mother were forced to depart the United States. However, as previously noted, the applicant's children are not considered qualifying relatives for purposes of a waiver of inadmissibility under Section 212(i) of the Act, and the evidence of record is not sufficient to demonstrate that hardship to the children would result in extreme hardship to the applicant's husband, the qualifying relative for purposes of this waiver. Mr. [redacted] stated in his declaration that without the applicant's presence in the United States, he would not be able to care for their children and work at the same time. However, as the director noted, the applicant has provided no evidence to support this claim. 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 acknowledges the letters from [redacted] and [redacted] regarding the psychological condition of the applicant's spouse. However, although the input of any mental health professional is respected and valuable, it is noted that [redacted] cites a single visit by the applicant's spouse, and [redacted] letter indicates that she saw the applicant's spouse on three different dates, but all within one month of the filing of the I-601. As such, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of ongoing treatment for the generalized psychological symptoms suffered by the applicant's spouse. Moreover, the AAO does not find the director's characterization of [redacted]'s comments "speculative" to be unreasonable, as the applicant contends. The record does not contain evidence that would support her comment that the applicant's spouse "would be devastated economically and socially" if he were to return to Mexico. Further, without prejudice to her qualifications as a mental health professional, the AAO notes the record lacks evidence showing that [redacted] is qualified to assess the economic and social impact of such an event.

In light of the foregoing, the AAO cannot conclude that the evidence of record is sufficient to demonstrate that the applicant's spouse would suffer extreme hardship due to the applicant's inadmissibility, if he were to remain in the United States.

As noted above, the applicant must also establish extreme hardship to her spouse in the event that he relocates with the applicant to Mexico. The applicant's spouse claims that he and the children would have to relocate to Sonora, Mexico, a region he claims to be particularly undesirable. However, as the director noted, the applicant's spouse gave no reason and provided no evidence to show why he would have to move to that particular region. Similarly, [redacted] claimed that if the applicant and their children must leave the United States, he would "have to choose between providing for them in Mexico [and] filing for bankruptcy." Again, no explanation was given, and no evidence was provided, in support of this claim. 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. 165. 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 notes the submission of the Arizona Republic article on Mexico. However, while the article is illustrative of economic

hardship in Mexico in general, it is insufficient to address the issue of how the applicant' spouse in particular would be affected.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [redacted] would face extreme hardship due to the applicant's inadmissibility to the United States. The AAO recognizes that the applicant's husband will suffer as a result of separation from the applicant. However, based on the record, his situation is typical of individuals separated as a result of removal or inadmissibility and does not 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 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 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)(6)(C) 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.