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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]

MAY 06 2009

FILE: [redacted] (CDJ 2004 765 301) Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date:

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:

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, 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. 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. He 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 his last departure. He is married to a United States citizen. He 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 his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 30, 2006.

On appeal, the applicant states that his wife will suffer extreme hardship if he is excluded and submits additional evidence in support of his waiver application.

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 entered the United States without inspection in June 2000 and remained until he departed voluntarily in November 2005. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he 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 other non-qualifying relatives 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).

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). As this case arises within the jurisdiction of the 9th Circuit Court of Appeals, separation of family will be given appropriate weight in the assessment of hardship factors.

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 the United States based on the denial of the applicant's waiver request.

The record includes, but is not limited to:

1. Statement from [redacted], the applicant's sister-in-law, asserting that the applicant's daughter misses him.
2. Statements from the applicant's spouse asserting that she has a history of depression and her depression has worsened since she lost her job, cannot pay her rent and has had to watch her daughter suffer as a result of her father's absence. The applicant's spouse also states that the applicant was the one who supported them economically, that she cannot drive, does not know how to use public transit, depends on the applicant for transportation, and that her daughter does not want to eat because she is sad as a result of missing her father.
3. **Statement from** [redacted] asserting that the applicant's spouse is a patient at the Denver Health Eastside Clinic, has a history of depression and post-partum depression, and that her depression has worsened and that she is being treated with medication and will be referred to counseling.
4. Copy of a prescription for Prozac in the applicant's spouse's name.
5. Statement from [redacted] asserting the applicant was an employee of [redacted] and will be re-hired.

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

The applicant's spouse asserts that her depression has worsened, and that their daughter is suffering emotionally from the absence of the applicant, and that she depends on the applicant for transportation as she cannot drive and does not know how to use public transit. While the record contains a statement from [redacted] and a copy of a prescription for Prozac, it fails to establish that the applicant's spouse would suffer extreme emotional hardship if the applicant's waiver application is denied. The undated statement from [redacted] which indicates that the applicant's spouse's depression has worsened in the preceding eight months to one year, does not establish the nature or severity of the applicant's spouse depression nor indicate how it affects the ability of the applicant's spouse to function on a daily basis. Moreover, the record does not establish that [redacted] is qualified to reach a mental health diagnosis with regard to the applicant's spouse. The AAO also notes that [redacted] states that the applicant's spouse has previously received counseling for her depression. However, [redacted] fails to identify the provider of this counseling or over what period of time it was provided. The record contains no documentation that provides this information. As such, the evidence with regard to the applicant's spouse's mental status is of minimal evidentiary value.

While the AAO acknowledges the claims made by the applicant's spouse and her sister regarding the applicant's daughter's emotional suffering as a result of her separation from her father, the record contains no documentation to support these statements. 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 applicant's daughter is not a qualifying relative for the purposes of this proceeding. The hardships experienced by non-qualifying relatives are not directly relevant to a determination of extreme hardship, except as they impact a qualifying relative, in this case the applicant's spouse. Here the record does not contain any evidence that demonstrates how the impact of the applicant's absence on his daughter causes

hardship to his spouse. Although the applicant's spouse has indicated that she depends on the applicant for transportation because she cannot drive, and does not know how to use public transit, the record does not establish that the applicant's spouse would be incapable of learning to drive or to use public transportation, thereby eliminating her dependence on the applicant for transportation.

The applicant's spouse has further asserted that that she will suffer financial hardship if the applicant is excluded from the United States. However, the record fails to document this claim, e.g., there is no breakdown of the applicant's spouse's financial obligations or that she is unable to pay her bills. Moreover, the AAO notes that the record fails to establish that the applicant would be unable to obtain employment in Mexico and assist his family financially from outside the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* at 65. As such, the record does not establish that the applicant's spouse would suffer extreme hardship if the applicant was excluded from the United States and she remained.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. In this case, the record does not articulate any basis or contain any evidence that the applicant's spouse and daughter would suffer extreme hardship if they were to relocate to Mexico with the applicant. Without such, it cannot be determined that the applicant's spouse would suffer an extreme hardship if the applicant was excluded from the United States and she relocated to Mexico.

Thus, the record, when reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if he is refused admission. The AAO recognizes that the applicant's spouse will endure hardship as a result of the applicant's inadmissibility. However, the record does not distinguish the hardship she would suffer from that commonly associated with removal, which 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 his 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 he 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.