U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

H3

[redacted]

MAY 07 2009

FILE: [redacted] Office: MEXICO CITY, MEXICO Date:
(CDJ 2004 689 418) (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 U.S. citizen and has four U.S. citizen children. 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 March 27, 2006.

On appeal, counsel for the applicant states that the applicant's husband will suffer extreme hardship if the applicant is excluded.

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 establishes that the applicant entered the United States without inspection in March 1990 and remained until she departed voluntarily on May 2, 2005, thereby triggering the unlawful presence provisions of the Act. Accordingly, the applicant accrued unlawful presence from April 1, 1997, the effective date of the provisions of 212(a)(9)(B) of the Act, until she departed the United States on May 2, 2005. As the applicant resided unlawfully in the United States for over a 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 to a determination of extreme hardship in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to the qualifying relative, in this case the applicant's spouse. 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 relocates with 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, counsel's brief; a psychologist's report based on an interview with the applicant's husband, statements from the applicant's spouse; birth certificates and school records for the applicant's children, an employment report for the applicant's husband, and a copy of the marriage certificate for the applicant and her husband.

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

Counsel for the applicant asserts the applicant's husband owns property in the United States, has a job in the United States, will be deeply affected by his wife's exclusion, and that the submitted psychological evaluation puts the applicant's husband in the "severe" range of depression and that he would be likely to develop a Major Affective Disorder based on the exclusion of his wife. Counsel further asserts that the applicant's husband has no immediate family in Mexico, and that, whether or not the applicant remains in the United States or relocates to Mexico with his wife, the hardships on him would be above the normal disruptions involved in a removal of a family member.

The record contains a psychologist's report from a licensed psychologist, [redacted], asserting that the applicant's husband is suffering from depression, anxiety, poor coping skills, high levels of frustration, impulsivity and confusion, placing him in the "severe" range of depression and anxiety. She further states that, in her opinion, a permanent separation from his wife would result in the applicant's spouse's development of Major Affective Disorder.[1] [redacted] diagnosis, however, fails to address the emotional impact of relocation on the applicant's spouse. [redacted] reports the applicant's spouse's belief that he needs to remain in the U.S. in order to support his family because he would not be able to do so in Mexico and cites unemployment statistics in Mexico to support her conclusion that he would be unlikely to find employment if he joined his family. However, the record does not establish [redacted] authority to speak to the state of the Mexican economy. Neither does it include documentary evidence in support of her 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)). Accordingly, the report by [redacted] is insufficient to establish that the applicant's spouse would suffer extreme hardship if the applicant's waiver application is denied.

The applicant's husband asserts that he misses his wife very much, that he suffers financially because he cannot provide for his children without his wife present, and that he suffers emotionally due to the effect of the applicant's absence on his children. The applicant informed [redacted] that he has had to refinance his home to support his family in his wife's absence, and that

[1] The AAO notes that the [redacted] evaluation was conducted on the premise that the applicant would be permanently separated from his wife, as opposed to a ten-year exclusion imposed by section 212(a)(9)(B).

the payments are now so high that he fears he will have to sell his house if his wife is cannot provide for the daily care of their children. While the AAO notes the applicant's spouse's claim, an examination of the evidence in the record does not find it to demonstrate how the applicant's exclusion would impact the applicant's spouse's financial situation. The record lacks documentary evidence of the applicant's spouse's finances or monthly obligations, and also fails to establish that the applicant would be unable to work and help support her family from Mexico. In addition, there is no documentary evidence that establishes that the applicant's spouse has recently refinanced his home, what his current payments are, or the impact that refinancing has had on his ability to meet the family's expenses. Without documentation to support the applicant's spouse's claims, the record does not establish the status of his finances. As such, the applicant has failed to establish that her spouse would suffer extreme hardship if she were to be excluded from the United States and he were to remain.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. While counsel asserts that the applicant's husband has no immediate relatives in Mexico, the AAO notes that the applicant's husband informed [redacted] that he had a mother, father, and eight siblings in Mexico, and that his wife and children were residing with them (but later indicated that he had brought his children back to the United States). Thus, the record is unclear as to the location of the applicant's spouse's extended family. The AAO also notes that during his interview with [redacted], the applicant's spouse stated that he would be unable to find work in Mexico and support his family. The record, however, does not contain any country conditions reports detailing the economic or employment conditions in Mexico, or other evidence that the applicant's husband would not be able to find employment in Mexico if he were to relocate with the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*, at 165. The applicant's spouse also asserts that his children do not speak Spanish and are not familiar with the culture of Mexico. As previously noted, extreme hardship to non-qualifying relatives is not directly relevant to a determination of extreme hardship under the statute except with regard to its impact on the qualifying relative. In this case, the record does not establish how the hardships experienced by the applicant's children would affect the applicant's spouse. As such, the record does not establish that the applicant's husband would suffer extreme hardship upon relocation to 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 faces extreme hardship if his wife is refused admission. The assertions discussed by the applicant's husband are hardships commonly associated with removal and separation, and do 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.