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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

[redacted]

#6

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: FEB 16 2010

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 8 U.S.C. § 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico.

In a decision dated December 5, 2006, the district director found that the applicant accrued unlawful presence in the United States from May 1999 through October 2005. The district director therefore found the applicant 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 longer than one year and seeking admission within ten years of his last departure.

The applicant applied for 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 his U.S. citizen wife and son. The district director also concluded that the applicant had failed to establish that the bar to admission would impose extreme hardship on the applicant's spouse and denied the waiver application accordingly. On appeal, counsel submitted a brief and additional evidence.

The record contains, among other documents, declarations dated September 20, 2005 and January 3, 2006 from the applicant's wife; documents pertinent to the applicant's wife's earnings; and records pertinent to medical conditions of the applicant's wife, the applicant's son, and the applicant's mother-in-law.

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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> . . . .
>
> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure of removal, or
> >
> > (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 shows that the applicant entered the United States without inspection during May 1999 and accrued unlawful presence from that date until departing voluntarily during October 2005. The applicant is seeking admission to the United States. Counsel has not disputed the applicant's inadmissibility on appeal. The AAO therefore affirms the district director's finding that the applicant is inadmissible pursuant to 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 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 his child is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See 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 nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA also held that:

> 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.

The AAO notes, however, that the courts 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). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (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). "[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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The applicant's wife is currently living in Mexico with the applicant. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he or she remains in Mexico and in the event that she returns to 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 application.

The letters from the applicant's wife contain various claims pertinent to hardship. In a letter dated September 20, 2005, the applicant's wife stated that she had not worked since July 2003 and that her husband is her family's sole support and the source of their health insurance. She stated that she, her two children, and the applicant then lived with her mother, and that she has two brothers who live nearby. She stated that her family needs the applicant not just for financial support, but for emotional support too. She stated, "I cannot go to Mexico," but did not elaborate.

In a letter dated January 3, 2006, the applicant's wife stated that she and the applicant have lived in Tecate, Baja California, Mexico since October 2005, and that the applicant had been unable to find steady employment there. She stated that she has taken a job in San Diego, California, but that it does not pay well and little is left after commuting costs. She stated that she is therefore suffering financial hardship. She did not state how much commuting to work costs her. She further stated that she left a son in California so that he could continue in school and because English is his primary language, but that she misses him very much and is only able to contribute minimally to his support. Yet further, she noted that her mother has diabetes and complications.

The record contains a pay statement showing that the applicant's wife works at a clothing store in San Diego and is paid $6.75 per hour. A letter from a medical doctor in Costa Mesa confirms that the applicant's mother-in-law has diabetes and various complications of the disease.

On appeal, counsel stated that the applicant is not employed because of an industrial injury. The record contains no corroborating evidence of that injury. The AAO notes, however, that if the

applicant is injured, as counsel asserts, then his inability to find employment might not be cured by admitting him to the United States. Counsel further stated, "While [the applicant] was residing in the United States, he provided a significant portion of the income which enabled the family to live comfortably. The AAO notes that in her September 20, 2005 letter, which the applicant's wife wrote approximately one month before she and the applicant departed to Mexico, the applicant's wife stated that she had not worked since July 2003 and that her husband was then her family's sole support.

Those statements appear to conflict somewhat, as they do not agree on whether the applicant was his family's sole support or whether he merely provided a significant portion of the family income. The AAO notes that, in any event, the record contains no evidence to corroborate the assertion that the applicant had any income in the United States.

To demonstrate that the applicant's absence would cause extreme hardship to his wife the applicant must show that, if he remains absent from the United States and his wife lives in the United States she will suffer extreme hardship. The applicant must also demonstrate that if he remains in Mexico and his wife lives with him in Mexico, that will cause her extreme hardship. The AAO will first consider the scenario of the applicant living in Mexico and his wife living in the United States.

Counsel and the applicant's wife have asserted that, if the waiver application is not approved the applicant's wife faces financial hardship, emotional hardship, and medical hardship which, when considered together, would rise to the level of extreme hardship.

An analysis of the financial hardship that will befall the applicant's wife if the applicant lives in Mexico and the wife lives in the United States is frustrated by the lack of evidence in the record. The record contains no evidence, apart from general assertions, that the applicant has ever earned any income in the United States. The evidence does not show whether the applicant was the family's sole support when he lived in the United States and, in fact, the assertions on that point are inconsistent, as was noted above. The record does not contain any indication of the recurring expenses the applicant's wife would face if she were living in the United States, nor of the total income that would be available to her, either with or without the applicant's presence.

The loss of any income entails some degree of hardship. Even assuming that the applicant had some income in the United States, however, the AAO is unable to compare the applicant's wife's potential income to her reasonable expenses to determine what degree of hardship she would suffer living in the United States either with or without her husband. The AAO is unable to find that living in the United States without the applicant would cause the applicant's wife any great degree of hardship, or to determine the degree to which the applicant's admission to the United States would assuage that possible hardship.

As to the emotional hardship that the applicant's absence will prospectively cause his wife if she lives without him, the applicant's wife indicated that she is emotionally attached to the applicant and that to live without him would therefore cause her hardship.

However, in nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

As to the medical hardship, the record contains a letter dated January 27, 2007 from a Tijuana pediatrician, which states that the son of the applicant and his wife has a condition that requires circumcision. The letter indicates that the operation would cost $5,000 to $6,000 pesos, which is roughly $400 to $500 at the current exchange rate. This letter was apparently provided to demonstrate hardship. The record does not demonstrate, however, that the applicant and his wife will be unable to afford that operation, whether the applicant's wife lives in the United States or Mexico, and whether the applicant lives in the United States or Mexico. Further, the record does not demonstrate that, if the applicant's son receives the operation, the condition will continue to cause any hardship to the applicant's wife.

A letter dated January 26, 2007 from a medical doctor in Tijuana states that the applicant's wife evinces cervical injury as a result of HPV infection and needs a hysterectomy, after which she will require 28 days of rest. This is a serious medical condition, and will require that the applicant's wife take leave from work. The record does not show, however, that the operation and recovery cannot be feasibly accomplished without the applicant's presence in the United States.

The applicant's wife has asserted that her family had health insurance while they were in the United States, but provided no supporting evidence. Counsel stated that, if the applicant and his wife returned to the United States, they could again have health insurance through the employment of one or the other, but provided no evidence in support of the assertion that health insurance would then be available to either of them. The AAO notes that employment of the applicant may be inconsistent with counsel's assertion that an industrial accident precludes his employment. Further, if the applicant's wife is able to obtain employment that will afford her medical insurance, she could likely do so without the applicant being present in the United States.

The AAO acknowledges that the applicant's wife is experiencing hardship. The record fails, however, to demonstrate that all the hardships described by the applicant's wife are the result of the applicant's inadmissibility. For instance, although counsel asserts that the applicant contributed to the family financially before his departure, and the applicant's wife asserts that he was the family's sole wage earner, the record lacks evidence detailing his employment and the amount of his financial contribution. Although the applicant's wife stated that the applicant provided the family with health care coverage through his employment, this, too, has not been corroborated. The assistance that the

applicant may have provided in caring for his child and his stepchild prospectively provide a benefit to the applicant's wife by allowing her to maintain her employment at an optimum level. But the evidence does not show that, without that assistance, the applicant's wife would be unable to provide sufficiently for her family. Further, the applicant's wife stated that she lived with her mother before she left the United States, and that she had two brothers living nearby. Another family member may be able to provide child care or to render other assistance if the applicant's wife chooses to live with her mother again.

The evidence does not demonstrate that, if the applicant lives in Mexico and his wife lives in the United States, the resulting hardship factors caused to the applicant's wife, considered together, will rise to the level of extreme hardship.

The remaining scenario to consider is that of the applicant and his wife remaining in Mexico. Immediately prior to moving to Mexico to live, the applicant's wife stated, without elaboration, that she is unable to live in Mexico. The applicant's wife later stated that moving to Mexico forced her and her family to forego health care insurance and caused her to miss family members remaining in the United States, including a son whom she left in California to continue his education. She also asserted that, after the subtraction of commuting costs, her current job pays very little.

Although the statements by the applicant's wife are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)). *See also Matter of Kwan,* 14 I & N Dec. 175 (BIA 1972). ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

Although the applicant's wife stated that she has very little remaining from her wages after paying commuting costs, she did not provide evidence of her expenses in Mexico or otherwise demonstrate that her wages are insufficient to support her and her family there. Absent additional evidence on that point, the AAO is unable to determine what degree of hardship, if any, the applicant's wife is suffering by having to support her family on her wages.

Further, as was previously noted, although separation from family members constitutes a degree of hardship, absent aggravating factors it is a type of hardship typical to cases of removal or inadmissibility.

The evidence provided does not demonstrate that, if the applicant is refused admission and his wife continues to live with him in Mexico, the various hardships she will face, considered together, will rise to the level of extreme hardship.

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 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.