identifying data deleted to prevent clearly unwarranted invasion of personal privacy
PUBLIC COPY

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]

H2
H6

FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: JAN 07 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 (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).

Perry Rhew
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 United States citizen. 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 November 17, 2006.

On appeal, the applicant's spouse asserts that he and his children are experiencing extreme hardship, and asks that the applicant's waiver be approved.

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 indicates that the applicant entered the United States without inspection in May 2001, and remained until she departed voluntarily in March 2006. As the applicant has 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 a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. 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 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).

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

The record includes, but is not limited to, a statement from the applicant's spouse; copies of letters from the office assistant at the school attended by the applicant's two children; copies of an electrical bill, a telephone bill and a wireless telephone bill; and copies of the applicant's birth certificate and marriage certificate.

On appeal, the applicant's spouse asserts that he and his children are suffering extreme hardship. He states that his family cannot function without the presence of the applicant, that travel costs to see his family are depleting his savings, that having to take care of his children without the applicant's help has jeopardized his job, that both he and his children are affected emotionally due to the applicant's absence, that he must send his entire salary to the applicant in Mexico when their children are living with her, that he is planning on moving in with a friend to save money, and that his situation will make him sick, which will be the end for him and his family.

The AAO accepts and acknowledges the applicant's sentiment with regard to having the applicant reside in the United States. However, there is insufficient evidence in the record to support the applicant's spouse's assertions regarding the hardship he is suffering in the applicant's absence. Neither does the record establish any other basis upon which to conclude that the applicant's spouse is experiencing extreme hardship. While the record contains copies of several bills, one of the bills is in the name of another person, leaving only two telephone bills as evidence of the financial hardship related to the applicant's absence. There is no evidence of the applicant's spouse's employment, income, or other bills such as a mortgage or rent, no bank statements or income tax returns, no receipts for money transfers sent to the applicant or any other documentation that might establish the financial impact of the applicant's inadmissibility. Moreover, the record fails to contain documentary evidence, e.g., country conditions reports on Mexico, to establish that the applicant is unable to obtain employment in Mexico and thereby reduce any financial burden on her spouse. In addition, there is no documentary evidence that demonstrates that the applicant's spouse is experiencing any emotional impacts that rise above those normally experienced by the relatives of excluded aliens. 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)).

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. In this case the applicant's spouse asserts that he and his children could not start their lives over in Mexico, and that moving his children to Mexico at this age would result in an extreme hardship to both him and his children. The applicant's spouse states that he would be unable to find employment to support his family in Mexico. He further asserts that moving to Mexico would jeopardize his children's education and their overall well-being, and that they would lose their lawful permanent resident status in the United States.

While the AAO accepts that the applicant's spouse wishes his children to reside in the United States, children, as discussed above, are not qualifying relatives in 212(a)(9)(B) proceedings. As such, any impact on them is not directly related to establishing extreme hardship in this case and the record does not document how any hardship they might suffer upon relocation would affect their father, the only qualifying relative. The applicant has also failed to submit any documentation that corroborates her spouse's assertions regarding his inability to find employment in Mexico. Accordingly, the record does not contain sufficient evidence to establish that the applicant's spouse will experience extreme hardship upon relocation with the applicant.

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 would face extreme hardship if she is refused admission. The AAO recognizes that the applicant's husband will experience hardship as a result of the applicant's inadmissibility. The record, however, does not distinguish his hardship from the commonly associated with removal and exclusion and it does not, therefore, 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.