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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]

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAR 22 2010

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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).

Michael Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City (Ciudad Juarez), 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 who 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 more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is the spouse of a U.S. citizen and has two U.S. citizen children. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated January 29, 2007, the district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

In a brief, counsel requests that the AAO consider the factors in the applicant's case in the totality of the circumstances and states that the applicant's spouse is suffering extreme hardship as a result of the applicant's inadmissibility.

The record indicates that the applicant entered the United States without inspection in July 1998. The applicant remained in the United States until January 2006. Therefore, the applicant accrued unlawful presence from July 1998 until January 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of her January 2006 departure. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (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 Attorney General [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 AAO notes that section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's spouse. Hardship to the applicant or her children is not considered under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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 in *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Court defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme

Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 and 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.

The record of hardship includes a brief, medical documentation, a psychological evaluation, financial documentation, a letter from the applicant's church, and a letter from a teacher at the applicant's child's school.

In his brief, counsel states that the applicant's spouse is suffering from severe mental depression, has been evaluated by a mental health professional, and is taking prescription medication. He states that the suffering of the applicant's children is causing the applicant's spouse tremendous anxiety and pain.

An evaluation completed by [redacted] and dated February 27, 2007 states that the applicant's spouse suffered a fall on February 18, 2007 where he injured his neck, back, knees, and feet. She states that he is taking pain medication and has been ordered to go to physical therapy, but does not go as often as he should due to cost and wanting to send his money to his family in Mexico. She states that the applicant's spouse also suffers from headaches and has difficulty driving for any distance, which is detrimental to his work as a trumpet player in a band because he must drive to various places around the city. The evaluation goes on to state that the applicant's spouse stated that he is under the care of a psychiatrist, who he first went to see in February 2007 and who diagnosed him with Major Depression and Anxiety and prescribed him medication to deal with these problems. The applicant's spouse also stated that he does not sleep well because of pain from his fall and his depressed mood and that he does not feel supported by his siblings and parents who live in Houston. The evaluation also shows that [redacted] did a home visit with the applicant's spouse and found him at 12:30PM still in his pajamas, with his blinds closed and no lights on. [redacted] adds that the applicant's spouse had to be reminded several times to meet for this evaluation and then again to gather evidence of his depression. Lastly, [redacted] states that the applicant's spouse travels to Mexico every two months to see his family and that his monthly income is $1,800 to $2,200 with his fixed expenses, not including credit card debt being $2,603.

In support of this evaluation and the applicant's spouse's statements to [redacted] the record includes a letter, dated February 12, 2007, from the applicant's spouse's psychiatrist, [redacted] which states that the applicant's spouse is currently being treated for depression, that he is unable to sleep or concentrate, and that his symptoms started after his wife's immigration application was denied. The record also contains bank statements for the applicant's spouse showing his monthly income and monthly expenses.

The AAO finds that the applicant's spouse is suffering extreme hardship as a result of being separated from the applicant. The record indicates through supporting documentation that the applicant's spouse is suffering emotionally and financially in the absence of the applicant.

The AAO notes that two documents are included in the record pertaining solely to the applicant's children. The first is a letter from the applicant's daughter's doctor dated February 8, 2007 that states that the applicant's daughter has been treated on several occasions with bronchitis, tonsillitis, and colds. The second is a letter from the applicant's son's school dated February 21, 2007 which states that the applicant's son is having trouble integrating into the classroom and is not performing well.

Although counsel has shown that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility, he has not shown that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico. Counsel states that the applicant's spouse is a professional musician who was born in the United States and has resided in the United States his entire life. He states that if the applicant's spouse relocated to Mexico he would suffer from severe lack of employment opportunities and a lack of reliable medical care, due to the country conditions in Mexico. The AAO notes that without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)). Counsel must submit documentation to support any claims of hardship. Because the record does not include documentation to support the hardship claims made by counsel in regards to relocation, the AAO cannot find that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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) 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.