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U.S. Citizenship
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Services

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FILE:

Office: MEXICO CITY (CIUDAD JUAREZ)

Date: AUG 13 2009

IN RE:

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:

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).

John F. Grissom
Acting 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, the husband of a U.S. citizen, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The district director also found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application.

On appeal, counsel stated that the evidence demonstrates that failure to approve the waiver application would cause extreme hardship to the applicant's spouse. Subsequently, counsel submitted a brief and additional evidence. Although counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(9)(B)(i) of the Act provides:

Any alien (other than an alien lawfully admitted for permanent residence) who –

(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 (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or 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.

The Form I-130, Petition for Alien Relative, which the applicant's wife signed on January 17, 2004, stated that the applicant had entered the United States without inspection during May 2001. The Form I-601 waiver application indicates that the applicant lived in Gilroy, California from 1999 to January 2004, and that his presence in the United States was pursuant to an entry without inspection.

In the appeal brief, counsel stated that the applicant entered the United States from Mexico without inspection in approximately May 1999 and then resided in the United States until February 2005,

when he voluntarily departed to Mexico. A marriage license and certificate in the record shows that the applicant and his wife were married, in Hollister, California, on November 22, 2003.

The record does not make clear whether the applicant's unlawful presence in the United States began on some date during 1999 or whether it began on some date during May of 2001. The record also does not make clear whether he departed the United States during January 2004 or February 2005. Whichever of those entry and departure dates is correct, however, the applicant was unlawfully present in the United States for more than one year. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

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

The Attorney General [now Secretary of Homeland Security] 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 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.

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 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-Morales*, 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 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 has held:

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).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record contains a letter, dated May 22, 2006, from the applicant's wife. She stated that she has financial problems, in that she is trying to make her mortgage payments and retain two vehicles. She stated that she cannot afford to go on disability because it will not cover all of her expenses. She stated that she is depressed and loosing sleep, but that her doctor does not want to prescribe any medication for her. She also stated that when she has visited the applicant in Mexico she has become ill from the altitude, suffering high blood pressure, with pain in her hands and feet and the inability to use them. The applicant's wife provided no documentary evidence to support her assertion that she has high blood pressure or suffers from altitude sickness, or that, if she does, the severity and consequences of those afflictions are severe.

The letter contains another letter from the applicant's wife. This letter is undated and in Spanish. It is not accompanied by an English translation. Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). Because the applicant's wife's statement was submitted without the required translation, its contents shall not be considered.

The record contains one more letter, dated November 6, 2006, from the applicant's wife. In it, she stated that she had been in mourning for her father and mother, and deeply saddened because her son had moved out of her home, when she met the applicant. She indicated that the applicant brought her out of her depression and helped her financially. She stated that she requires her husband's financial assistance although she earns \$2,600 per month. She also stated that she suffers from high blood pressure and must remain in the United States in order to obtain treatment. She also stated that she has lost weight as a result of her depression.

The record contains no evidence to support the applicant's wife's assertion that she has high blood pressure. The record contains no evidence to support the applicant's wife's implication that treatment for her asserted high blood pressure would be unavailable to her in Mexico. The record contains no evidence in support of the applicant's wife's assertion that she earns \$2,600 per month. The record contains no evidence in support of the applicant's wife's assertion that she has a mortgage payment or any payments to make on her vehicles, nor even any evidence that she has any vehicles. The record contains no evidence that the applicant earned any income in the United States or contributed any amount to his wife's support.

The record contains a letter, dated April 6, 2006, from [REDACTED] a medical doctor. Dr. [REDACTED] states that the applicant's wife is experiencing insomnia because of her bills, which she was

able to pay when her husband was in the United States. [REDACTED] stated that antianxiety/antidepressant medication did not seem to help her, and he is unwilling to place her on medication continually because he believes she will become dependent upon them.

The record contains another letter, dated November 2, 2006, from [REDACTED]. In it, he stated that the applicant's wife is employed at the health clinic where he also works. He reiterated that the applicant's wife is in debt and worries about her financial situation, about losing her home, and about losing her vehicles. He stated that she is suffering from depression and insomnia, that medication did not appear to help her, and that he does not want to prescribe it continuously. He stated that the applicant's wife's health is deteriorating; that she frequently has chest discomfort, a cough, and a runny nose; and that she is often late for work or calls in sick. [REDACTED] further stated that the applicant's wife has lost her appetite, and is losing weight.

[REDACTED] attributed the applicant's wife's mental and physical symptoms to the applicant's absence, stating that she was happy and well when her husband was present, has since deteriorated, and that he is confident that she will return to normal if she is reunited with her husband.

[REDACTED] did not state whether or on how many occasions he consulted with the applicant's wife pertinent to her physical and emotional health. Other than his assertion that medication did not appear to help, he did not provide any indication that he has been treating her. As to medications, he did not indicate what medications he tried, the dosages he tried, or how long the applicant's wife was on those medications.

The record contains a letter, dated October 6, 2006, from [REDACTED], a licensed clinical social worker. [REDACTED] stated that the applicant's wife had been referred to his office for an evaluation of the degree of hardship that failure to approve the applicant's waiver application would cause to his wife.

[REDACTED] stated that the applicant's wife reacted to the death of her mother in 1991 and the subsequent death of her father with symptoms of depression, anxiety, and guilt greater than what would normally be expected. He stated that she came out of her depression when she met the applicant, and that they enjoyed various activities together.

[REDACTED] stated that since the applicant departed for Mexico, the applicant's wife has reverted to her previous distressed state. He stated that she has a diminished interest in activities, suffers from insomnia, is sometimes uncontrollably agitated, suffers from fatigue and energy loss, suffers from excessive or inappropriate guilt and feelings of worthlessness, has recurrent thoughts of suicide, and that her weight has gone from 162 lbs. to 183 lbs., a gain of almost 13 percent. [REDACTED] diagnosed the applicant's wife with Major Depressive Episode – Recurrent.

[REDACTED] did not indicate whether or how often he interviewed the applicant's wife in reaching his conclusion. He gave no indication either that he has undertaken to treat the condition he diagnosed or that he has referred her for treatment.

In the brief filed on appeal, counsel stated that the applicant's wife lost both of her parents during 1991, that her son left her home at about the same time, that "[a]round 1991" the applicant and his wife met, and that, "[d]espite all the pain and agony [the applicant's wife] was going through in 1991, [the applicant] was able to turn her life around." Elsewhere in the brief, counsel stated that when the applicant and his wife met, she had just lost her mother to gall bladder cancer, and that her depression deepened when she lost her father during the same year. Elsewhere in the brief, counsel stated, "After she met the Applicant, everything changed for the better. Her depression cleared up." Counsel stated that, "[a]fter a long courtship, Applicant and his wife married on November 22, 2003" Counsel stated that, "the unique situation [that the applicant's wife] was in when she met the Applicant . . . makes her case extremely compelling."

The AAO notes that, according to death certificates provided, the applicant's wife's mother died on April 15, 1990 and her father died on August 1, 2001, more than ten years later, and considerably after counsel stated that she met the applicant. Although counsel stated that her depression dissipated when she met the applicant, the applicant's wife herself stated that her depression worsened with the death of her father. [REDACTED] also stated that, in his October 6, 2006 report.

Counsel further stated, "[The applicant's wife's truck had been] repossessed, but with [the applicant's] help, [the applicant's wife] was able to pay off the balance she owed on her truck and again, she reacquired ownership and possession of her truck." The record contains no evidence to support counsel's assertions pertinent to the applicant's wife's ownership of a truck, its repossession, or its subsequent redemption. The record also contains no evidence pertinent to the applicant's earnings when he was present in the United States, or any evidence to support counsel's assertion that the applicant contributed to that asserted redemption.

Counsel reiterated the applicant's wife's assertions that she makes \$2,600 per month. Counsel also stated that the applicant's wife is financially troubled because she has a home and a vehicle. The AAO notes that the applicant's wife stated that she has two vehicles. Again, counsel provided no corroborating evidence pertinent to the applicant's wife's income or expenses.

Counsel reiterated the claims that the applicant's wife's health is deteriorating, that she suffers from insomnia, coughs, runny nose, and chest discomfort. Counsel reiterated the applicant's wife is suffering from depression and that anti-anxiety medications have not helped her. Counsel reiterated that the applicant's wife suffers from insomnia, fatigue, loss of energy, feelings of worthlessness, inappropriate or excessive guilt, and suicidal ideation.

Counsel also reiterated the claim, previously made by the applicant's wife and [REDACTED], that the applicant's wife's depression has caused her to lose her appetite, which has resulted in a loss of weight. He also cited the report from [REDACTED] for the proposition that her weight has climbed from 162 lbs. to 183 lbs.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with independent objective evidence. Attempts to explain or

reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Although counsel argued that failure to approve the waiver application would result in financial hardship to the applicant's wife, counsel provided no evidence, other than the applicant's wife's assertions, pertinent to any income the applicant ever earned in the United States or any financial assistance he ever rendered to her, or pertinent to the applicant's wife's income, or pertinent to the applicant's wife's expenses. The record does not even contain a budget showing that the applicant's wife's income is insufficient, by itself, to pay her monthly expenses.

Although the statements by the applicant's spouse 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)). Counsel has not demonstrated that the applicant ever contributed to his wife's support, or that the loss of his contribution, if any, would cause her hardship which, when considered together with the other hardship factors in this matter, would rise to the level of extreme hardship.

Although the input of any medical doctor or mental health professional is respected and valuable, the AAO notes that the reports submitted fail to reflect an ongoing professional relationship with the applicant's wife or any detailed history of treatment for the disorder allegedly suffered by the applicant's wife. Rather, [REDACTED] implies that the sole reason for his meeting the applicant's wife was to produce the report for use in this proceeding, and the letter from [REDACTED] does not reflect any relationship at all except that he and the applicant's wife are coworkers. The conclusions reached in the submitted reports do not, therefore, appear to reflect the insight and elaboration commensurate with an established relationship with a health professional. Absent such a relationship, the AAO considers the findings in those reports speculative and of diminished value in determining extreme hardship.

Further, [REDACTED] stated, in his November 2, 2006 letter, that the applicant's wife is losing weight because of her depression and the associated loss of appetite and [REDACTED] stated, in his October 6, 2006 report, that her depression caused her to gain weight. The inability of those two professionals to agree on this objective and readily quantifiable fact casts doubt on the accuracy of their reports. For all of those reasons, the reports of [REDACTED] and [REDACTED] are accorded little evidentiary weight.

The evidence in the record is insufficient to show that failure to approve the waiver application will cause hardship to the applicant's wife which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The remaining issue is whether the applicant's wife could join her husband in Mexico without incurring extreme hardship. The AAO notes that the applicant's wife chooses to live in the United

States. As such, to move to Mexico would cause her some degree of hardship. That degree of hardship would not by itself, however, qualify as extreme hardship.

The applicant's wife stated that, when she visits the applicant in Mexico City, she suffers from altitude sickness that manifests itself as elevated blood pressure accompanied by swelling and pain in her hands and feet that makes her unable to use them. The AAO notes that the elevation of Mexico City exceeds 7,000 feet above sea level, which considerably exceeds the elevation in Huron, California, where the record shows that the applicant's wife now lives. However, the record contains no corroborating evidence of this condition. The applicant's wife's assertion of that condition is insufficient to sustain the burden of proof in this matter. Further, various locations in Mexico are at much lower elevations, and the applicant's wife did not provide any reason that she and her husband would be able to live at a lower elevation in Mexico.

The applicant's wife stated that she suffers from high blood pressure and must remain in the United States to continue her treatment. She offered no corroborating evidence for the proposition that she has high blood pressure, however, and did not explain why treatment would not be available to her in Mexico. The evidence in the record is insufficient to show that, if the applicant's wife moved to Mexico to live with her husband, her medical conditions would cause her to suffer hardship which, when combined with the other hardship factors in this matter, would constitute extreme hardship.

The evidence in 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 spouse faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. 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 clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

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 "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.