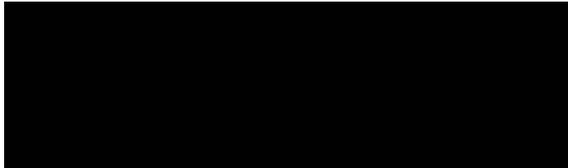




U.S. Citizenship
and Immigration
Services

H2



FILE: [REDACTED]
(CDJ 2005 504 304)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: DEC 03 2009

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. He 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 his last departure. He is married to a United States citizen. He 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 his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 26, 2007.

On appeal, the applicant's spouse asserts that having to work so many hours to meet her financial obligations has taken a toll on her physically and emotionally.

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 2000 and remained until he departed voluntarily in August 2006. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he 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 is not directly relevant 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, statements from the applicant’s spouse; copies of various utility bills for the applicant’s spouse; credit card bills; an insurance bill; a medical bill; a storage rental bill; telephone bills; a bank account statement for the applicant’s spouse; and copy of a prescription for the applicant’s spouse.

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

The applicant’s spouse asserts on appeal that she is unable to meet her financial obligations without the applicant being in the United States to assist her. She states that she has had to work double shifts and is unable to attend school due to her financial situation. She also asserts that she suffers from severe allergies and migraines, affecting her ability to work; that she assists in caring for her mother who is ill and that she is suffering from depression.

The record contains copies of a medical bill, \$0 balance due; an AT&T telephone bill, \$35 balance due; a State Farm Insurance statement (no name of account holder indicated); a Sears Credit Card statement, minimum payment of \$62 due; a copy of bank statement from Wells Fargo showing account activity; a copy of a check for \$495; a storage service bill, \$0 balance due; a Cingular Wireless bill, balance due \$231; a CVS prescription receipt for \$10; a Target National Bank statement, minimum payment of \$25.90 due; a Chase account statement, minimum payment of \$14.00 due; and a JC Penny account statement, minimum payment of \$115 due. The record contains sufficient evidence to establish that the applicant's spouse has numerous financial obligations. However, it does not contain sufficient documentation to establish that she is experiencing financial hardship. There is no objective documentation establishing her income, such as tax documentation or pay stubs, and thus it cannot be determined that she is unable to meet her financial obligations. In addition, some of the bills submitted do not clearly indicate that she is the listed account holder. Without evidence that clearly and objectively establishes her total monthly obligations and income, United States Citizenship and Immigration Services (USCIS) cannot make a clear determination of her financial hardship. Even in a light most favorable to the applicant, if the record contained evidence sufficiently probative of financial hardship, economic hardship alone is not sufficient to establish extreme hardship. *INS v. John Ha Wang*, 450 U.S. 139 (1981).

The record also fails to document the other assertions of the applicant's spouse. There is no evidence that the applicant's spouse is providing assistance to her parents or that her mother is ill. There is no evidence that establishes that the applicant is unable to provide financial assistance from abroad to alleviate any financial hardships being experienced by his spouse.

With regard to the applicant's spouse's assertions that she suffers from allergies and migraines, as well as depression, the record contains a copy of one CVS pharmacy receipt for medication and a medical billing statements that lists several other medications prescribed for the applicant's spouse. The AAO finds this evidence to be insufficient to support the assertions of the applicant's spouse that she suffers from conditions that affect her ability to work. There is no evidence in the record that clearly establishes that the applicant's spouse is currently or was employed or was attending school prior to the applicant's exclusion. 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. Neither the applicant nor his spouse articulate any impacts on her if she were to relocate to Mexico. As such, the record does not establish that she would experience extreme hardship if she were to join the applicant in Mexico.

When considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the hardship factors discussed in the record do not support a finding that the applicant's spouse would face extreme hardship if he is refused admission. The AAO recognizes that the applicant's spouse will experience hardship as a result of the applicant's inadmissibility. The record, however, does not distinguish her hardship from that commonly associated with removal or 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 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.