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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**

PUBLIC COPY

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FILE: [REDACTED]
(CDJ 2004 757 081)

Office: CIUDAD JUAREZ, MEXICO Date: NOV 04 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), and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

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 Officer in Charge (OIC), 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. 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), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure and entering the United States by fraud or willful misrepresentation. He is married to a naturalized United States citizen and has one U.S. citizen child. 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 OIC concluded that the applicant had failed to establish that the bars 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 February 16, 2007.

On appeal the applicant's spouse asserts that she is experiencing extreme hardship and requests that U.S. Citizenship and Immigration Services approve the applicant's waiver request.

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.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

(i) **In general.** Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other

documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien

The record indicates that the applicant entered the United States in February 2000 by using another person's visa and remained until he departed voluntarily in January 2006. As the applicant used the visa of another person to enter the United States, he is inadmissible under section 212(a)(6)(C)(i) of the Act. As the applicant also resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest these findings.

A waiver of inadmissibility under section 212(a)(9)(B)(v) or 212(i) 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 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 the qualifying relative, the applicant's spouse. 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; medical documents for the applicant's spouse; and a birth certificate for the applicant's daughter.

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

The applicant's spouse has submitted a statement asserting that she is very sad without the applicant, that she has several medical conditions which could require further treatment, that she has recently been put on medication for depression, and that she does not earn enough to support herself and her daughter and visit the applicant in Mexico. She states that she needs the applicant present to provide income for their family. The record includes medical documentation submitted by the applicant's spouse. However, the documents consist of test results and handwritten notes and do not specifically corroborate what the applicant's spouse has asserted with regard to her health. The AAO is not qualified to interpret medical tests or medical observations made by physicians and therefore, cannot draw conclusions based on the nature or content of the documents submitted. As such, the record does not support the applicant's spouse's assertions that she has any significant medical condition.

The record also lacks any documentation of financial hardship. There is no evidence indicating the amount of income earned by the applicant's spouse, nor of the income that was earned by the applicant while he was present in the United States, and no evidence of the current financial obligations of the applicant's spouse. 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)). As such, the record also fails to demonstrate that the applicant's spouse is experiencing financial hardship.

The AAO acknowledges the statements of the applicant's spouse regarding her desire to have the applicant with her in the United States and that she wishes to attend college, which she cannot do without a second income in her household. However, the record does not distinguish her hardships from those commonly associated with removal and separation and do not constitute extreme hardship. *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986). Without additional evidence indicating that the applicant's spouse is experiencing some impact that rises above that normally experienced by the relatives of excluded aliens, the record does not establish that she will experience extreme hardship if the applicant is excluded and she remains in the United States.

Extreme hardship to a qualifying relative also must be established if he or she relocates with the applicant. The applicant's spouse asserts that Mexico is a country where there is poor sanitation and there are no health benefits for children. She states that, as a result of such conditions, it would not be a good idea for her and her daughter to relocate to Mexico. The applicant's spouse also notes that her daughter is nearing the age where she will attend school and that the United States provides the best educational opportunities for her. While the AAO notes the statements made by the applicant's spouse, it does not find the record to support them. The record contains no documentary evidence, e.g., published country conditions reports, to demonstrate the state of sanitation, healthcare, education or other conditions in Mexico. Going on record without supporting documentation will not meet the applicant's burden of proof in these proceedings. *Matter of Soffici, supra*. Moreover, as previously indicated, the applicant's daughter is not a qualifying relative for the purposes of this proceeding and the record fails to indicate how any hardship she would experience in Mexico would affect her mother, the only qualifying relative. As such, the applicant has not demonstrated that his spouse would suffer extreme hardship if she were to relocate to Mexico with him.

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 faces extreme hardship if his wife is refused admission. 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 sections 212(a)(9)(B)(v) and 212(i) 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.