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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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FILE:

(CDJ 2004 698 198)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: NOV 04 2009

IN RE:

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:

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 the husband and father of United States citizens. 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 November 14, 2006.

On appeal, counsel for the applicant states that the applicant's spouse is suffering financially and emotionally due to the applicant's exclusion and that, if she relocates to Mexico, she will be subjected to the political and social problems prevalent there.

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 in 1996 without inspection, and resided in the United States until November 2005, when he voluntarily departed to Mexico. Therefore, the applicant was unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provisions of the Act until November 2005, and is now seeking admission within ten years of his last departure from the United States. Accordingly,

the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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 his 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 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, counsel's brief; statements from the applicant's spouse; photographs of the applicant and his family; a copy of a travel advisory from the U.S. Department of State, Bureau of Consular Affairs, current as of October 16, 2008; a copy of a "City Assessment" for Monterrey, Mexico, by FAM International Logistics, Inc.; newspaper clippings of crime incidents in Monterrey, Mexico; medical documentation pertaining to pharyngitis and asthma; a statement from a "staff psychiatrist" at the Border Region MHMR Community Center; copies of receipts from EZ PAWN; a copy of a marriage certificate for the applicant and his spouse; a copy of a divorce decree and settlement from a previous marriage for the applicant's spouse; and copies of birth certificates for the applicant's spouse and two of her children.

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

Counsel asserts that the applicant's spouse has been diagnosed with Major Depression Disorder, which is exacerbated by the applicant's exclusion from the United States, and is taking prescription medicine for her condition. She further states that the applicant's spouse's constant anxiety and worry over her husband's safety in Mexico exacerbates her depression and that she is only able to work part-time as a result of her medical condition. The applicant's spouse asserts that she has lost the family's apartment and furnishings due to the applicant's exclusion, that she and her children have had to relocate numerous times, and that her part-time employment does not provide the income necessary to raise four children.

The record contains a statement from a staff psychiatrist at the Border Region MHMR Community Center that indicates that the applicant's spouse is suffering from Major Depressive Disorder, Recurrent, Moderate, as well as a prescription for the antidepressants Lexapro and Trazodone, a referral form to the Gateway Clinic and an unsigned treatment plan covering a 12 month period. The AAO does not, however, find this documentation to establish that the applicant's spouse is suffering extreme emotional hardship in the applicant's absence. Although the input of any mental health professional is respected and valuable, the AAO finds the diagnosis provided by the staff psychiatrist to be of limited evidentiary value as it is not supported by a detailed analysis of the applicant's emotional state, including a discussion of the depressive symptoms she exhibits and how they affect her ability to function. In the absence of such an analysis, the signed statement, prescription, referral form and treatment plan are insufficient proof of the applicant's spouse's emotional state.

The AAO also notes that the record lacks sufficient documentation to establish the medical conditions of the applicant's two youngest children.¹ The medical records submitted contain a description of each condition, pharyngitis and asthma, but do not indicate that the conditions are permanent or chronic. It cannot be determined from the record that the applicant's children have experienced more than a single episode of these conditions. Further, as noted above, hardship to the applicant's children is not directly related to a determination of extreme hardship in these proceedings and the record fails to establish how whatever medical conditions they may have affect the applicant's spouse, the only qualifying relative. Therefore, the record does not establish that the health of the applicant's children would result in hardship to his spouse if she remained in the United States.

The AAO acknowledges the statements of the applicant's spouse that she has lost the family's apartment and furnishings, has had to relocate her family's residence several times, and is having financial difficulties due to the applicant's exclusion. The record, however, does not contain any evidence that supports her assertions. There is no tax documentation, no evidence of income or of monthly financial obligations, no evidence corroborating that the applicant lost the family's apartment or furnishings, or that she is burdened by significant debt. While the record contains two

¹ The AAO observes that, although the record contains birth certificates for the applicant's two older children, there is no similar proof of parentage for the two younger children claimed by the applicant.

pawnshop receipts, these two documents are not sufficiently probative to establish her financial status or that she had to pawn any of her own belongings in order to purchase medicine for her youngest child as she asserts. As such, the record does not establish that the applicant's spouse has suffered or will suffer extreme hardship if the applicant were to be excluded from the United States for a period of ten years and she were to remain in the United States.

Extreme hardship to a qualifying relative must also be established if he or she accompanies the applicant or remains in the United States.

Counsel has asserted that the applicant's spouse's family resides primarily in the United States, that the applicant's spouse would be unable to receive proper medical care in Mexico, that she would be unable to obtain employment in the remote rural location where the applicant resides and that political and social conditions in Mexico make it too dangerous for her and her children to relocate to Mexico with the applicant. She notes the elevated state of violence in the State of Nuevo Leon where the applicant lives. Counsel further states that the applicant's daughters suffer from pharyngitis and asthma, and that they would not be able to receive proper medical care in Mexico, and that the applicant's spouse's mother is dependent on her assistance, which precludes her from relocating to Mexico with the applicant.

As noted above, the record contains little evidence to corroborate counsel's assertions. The record does not contain any evidence sufficiently probative to establish that the applicant's children have experienced more than a single episode of the noted conditions, that their conditions would be exacerbated by relocating to Mexico or that their conditions would not be treatable in Mexico. Further, they are not qualifying relatives in this proceeding and the record does not demonstrate how any hardships they might experience upon relocation would affect their mother. Neither is there evidence, e.g., published materials on the Mexican economy or unemployment, that establishes that the applicant and his spouse would be unable to obtain employment and support their family in Mexico. The record also fails to support counsel's assertion that the applicant's mother-in-law is dependent on his spouse for assistance. Although the record includes a medical record for the applicant's mother-in-law, it does not establish that she is unable to care for herself or that she is in any way dependent on the applicant's spouse.

The AAO acknowledges the 2008 travel alert issued by the U.S. Department of State. The current bulletin advises U.S. citizens to exercise caution when traveling in areas of known drug activity, and to utilize "common sense" in unfamiliar areas. At this time, the AAO is not persuaded that the conditions are such that the applicant and his family would be at risk in the remote area of Nuevo Leon where counsel indicates that the applicant currently resides. Moreover, it notes that the record fails to establish that the applicant and his family could not relocate to another area of Mexico further away from the border area where the travel alert indicates most narcotics trafficking occurs. The AAO also acknowledges the submission of the "City Assessment" of Monterrey, Mexico prepared by FAM International, Inc., but cannot verify the accuracy of the information it provides. Further, as just noted, the record indicates that the applicant's family would reside in a remote area of Nuevo Leon, rather than Monterrey. As such, the record does not establish that the applicant's spouse would experience extreme hardship if she were to relocate with the applicant to Mexico.

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 he is refused admission. The AAO recognizes that the applicant's spouse will experience hardships as a result of the applicant's inadmissibility. The record, however, does not distinguish her hardships from those commonly associated with removal and separation. Whether considered individually or in the aggregate, they do not 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.