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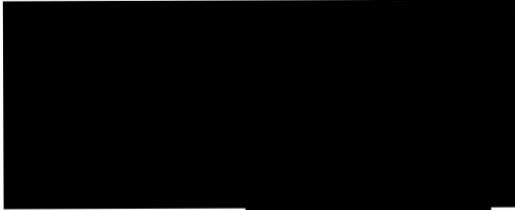
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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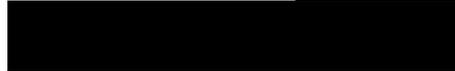
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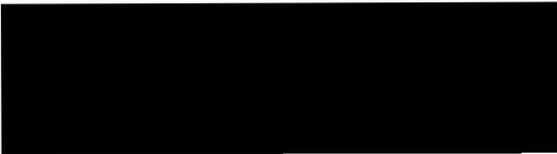
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IN RE:



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

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 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 sections 212(a)(1)(A)(iii) and 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. §§ 1182(a)(1)(A)(iii) and 1182(a)(9)(B)(i)(II), for having a physical or mental disorder with associated harmful behavior and 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 and has two U.S. citizen children. He seeks a waiver of inadmissibility pursuant to sections 212(g) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(g) and 1182(a)(9)(B)(v).

The OIC concluded that the applicant had complied with the waiver requirements of section 212(g) of the Act, but had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, as required for a waiver under section 212(a)(9)(B)(v) of the Act, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 9, 2007.

On appeal, counsel for the applicant states that the OIC's decision was in error, and that the applicant's spouse will suffer extreme hardship if the applicant is excluded from the United States.

In that the applicant has satisfied the waiver requirements of section 212(g) of the Act, the only issue before the AAO is whether he has also established that his U.S. citizen spouse would experience extreme hardship if his waiver application is denied.

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 1990 and remained until 1992, when he was apprehended by the legacy Immigration and Naturalization Service and allowed to depart voluntarily. He returned to the United States the same year, again without inspection, and remained until he departed voluntarily in March 2006. *Refusal Worksheet*, dated March 3, 2006. The applicant accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed voluntarily in March 2006. As he 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. 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; copies of birth certificates for the applicant's children; a copy of the applicant's spouse's naturalization certificate; a psychological evaluation prepared by [REDACTED] a licensed clinical psychologist; copies of statutes relevant to the applicant's conviction for driving under the influence; and a copy of the disposition for the applicant's conviction.

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

On appeal, counsel for the applicant asserts the OIC's decision was erroneous and attempts to distinguish several cases cited by the OIC in his decision based on their fact pattern. Aside from *Matter of Tin* and *Matter of Lee*, which involve the exercise of discretion, the AAO finds the OIC's references to the cases cited to have been appropriate. The cases counsel notes were not referenced for their individual outcomes or because their fact patterns were similar to the present case, but for their holdings on what constitutes extreme hardship, and are thus relevant to this proceeding.

Counsel states that the applicant's spouse is currently unemployed and is heavily dependent on the assistance of her family in order to cover her and her children's financial needs. He also asserts that she will suffer extreme emotional hardship if the applicant's waiver application is denied, pointing to the psychological evaluation in the record prepared by [REDACTED]. The applicant's spouse states that she cannot provide emotional stability for her children without her husband, that she has to work the second shift at her place of employment because she is unable to obtain child care, that her children are suffering emotionally due to the applicant's exclusion, and that she is experiencing financial hardship based on the applicant's exclusion. The applicant's spouse states that she has spent \$6,300 on travel to Mexico and has drained the family's savings. She also asserts that she is unable to liquidate any of her and the applicant's assets, and has had to move in with her family since it is impossible to support her children without the applicant's income.

An examination of the record reveals that the assertions of the applicant's spouse and counsel regarding her financial hardship are not supported by the record. The record does not contain any evidence of the applicant's spouse's financial obligations, incurred debt or expended savings. Neither does it include evidence that establishes that the applicant's spouse and her children are being supported by her family. 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)). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The record contains a statement from [REDACTED], a licensed psychologist. In his statement, [REDACTED] indicates that he interviewed the applicant's spouse and children, and conducted a number of psychological tests. He then states:

Test results indicate [applicant's spouse] is experiencing a clinical depression and post traumatic stress disorder. This goes beyond the normal grieving or emotional reaction that would be expected under the circumstances . . . She can not eat, sleep, or stay focused which is so disrupted that it interferes with her occupation involving working around dangerous machinery . . . her weight has dropped dramatically . . . and suffers from acid reflux, fatigue, and heart palpitations.

While the AAO notes [redacted] conclusions regarding the applicant's spouse, it does not find the evaluation to establish that the applicant's spouse would suffer extreme emotional hardship in the applicant's absence. [redacted] indicates that he conducted a range of psychological tests at the time of his interview with the applicant's spouse and states that the results of these tests indicate that the applicant's spouse is experiencing clinical depression and posttraumatic stress disorder. However, [redacted] fails to report any of the findings reached by the tests he administered or how the applicant's spouse's scores on these tests relate to or establish her emotional state. Moreover, the record also fails to corroborate any of the symptoms (inability to eat or sleep, inability to focus, weight loss or anxiety attacks) reported to [redacted] by the applicant's spouse, e.g., medical records, evidence of doctor's visits, pharmacy receipts or statements from the applicant's spouse's employer, or family members and friends. [redacted] evaluation, which is dated May 30, 2007, also reports that the emotional state of the applicant's spouse is so disrupted that it interferes with her work with dangerous machinery. However, counsel's brief, dated June 8, 2007, indicates that the applicant's spouse is no longer employed. Further, the AAO notes that [redacted] report is based on a single interview with the applicant's spouse and, therefore, also finds it to lack the insight commensurate with an established relationship between a mental health professional and a patient, which also diminishes its value to a determination of extreme hardship.

The AAO notes the psychological evaluations of the applicant's children included in [redacted] report, but, as previously discussed, the applicant's children are not qualifying relatives for the purposes of this proceeding and the record fails to document how any emotional hardship they may be experiencing affects their mother, the only qualifying relative. Moreover, the AAO finds their evaluations to be affected by the same types of deficiencies just noted.

Given the evidence in the record, it cannot be determined that the applicant's spouse is experiencing emotional or financial hardships that rise above those normally experienced by the relatives of excluded aliens. As such, the record does not establish that the applicant's spouse would experience extreme hardship if she remained in the United States during the applicant's ten-year period of exclusion.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant.

Counsel asserts that the applicant's spouse has lived in the United States for most of her life, no longer has family outside the United States and is very close to her family, most of whom live in Michigan or Chicago. He states that if the applicant's spouse were to live in Mexico, she would not be able to see her elderly parents or her siblings as often. Further, he states that she would be unable

to find employment in Mexico, particularly in the small, rural community in which she will live. Counsel also contends that, in Mexico, the applicant's spouse would be unable to provide for her and her children's most basic needs, let alone make payments on any existing debt.

The applicant's spouse asserts that she and her family cannot relocate to Mexico because it is infested with scorpions, her daughter has eczema and needs medication that she would be unable to obtain in Mexico as she would not have medical insurance there, her children's vaccination schedule would be interrupted and they would be susceptible to disease, the drinking water is not safe in Mexico and the sanitary conditions there are inadequate. She also asserts that her children do not read any Spanish and do not speak Spanish fluently.

The AAO notes that the record fails to support counsel's assertions regarding the applicant's spouse's inability to obtain employment in Mexico. There are no country conditions reports in the record that establish the economy or unemployment levels at the location in Mexico where counsel indicates that the applicant and his spouse would live. Further, the record does not demonstrate that the applicant and his spouse would have to reside in rural Mexico. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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). Accordingly, the applicant has not established that he and his spouse would be unable to obtain employment and earn sufficient income to support their family in Mexico.

Although the AAO acknowledges the applicant's spouse's concerns for her children, they are not qualifying relatives in this proceedings and the record does not document how the educational problems created by their inability to read or write in Spanish would affect their mother. Neither does the record establish that the applicant's daughter suffers from eczema and would be unable to obtain medication for her condition in Mexico or that the applicant's children could not continue with their vaccinations in Mexico. The record also fails to document sanitary conditions in Mexico or demonstrate that drinking water is not safe there. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Therefore, based on the record, the AAO does not find the applicant to have established that his spouse would experience extreme hardship if she relocated 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 would face extreme hardship if he 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 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.