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U.S. Citizenship  
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**NOV 19 2009**

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

IN RE: [REDACTED]

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: 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
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 wife of a U.S. citizen, and the beneficiary of an approved Form I-130 petition. 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)(II) of the Act.

The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife. The district director also found that the applicant had not established that failure to approve the waiver application would cause extreme hardship to her U.S. citizen spouse, and denied the application.

A brief filed on appeal reiterated that failure to approve the waiver application in this case will cause extreme hardship to his USC spouse. Although the applicant 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.

In a G-325 Biographic Information form, which the applicant signed on November 18, 2005, the applicant stated that she had lived in Reno, Nevada since October 1999. On the Form I-601 waiver application the applicant, who signed that application on November 18, 2005, indicated that she had lived in Reno, Nevada from January 1999 to November 2005, after entering the United States without inspection. The application submitted the Form I-601 waiver application in Ciudad Juarez, Mexico on November 18, 2005, which indicates that the applicant had left the United States.

The appeal brief in the record, which the applicant's husband signed on October 19, 2006, stated, [The applicant] lived in the United States for more than one year following her entry without inspection." The record does not demonstrate that the applicant ever attained any legal status in the

United States. The applicant's husband also stated, "In 2005 [the applicant and her husband] attended an interview in the United States Consulate in Juarez, Mexico."

The evidence in the record is sufficient to show that the applicant was unlawfully present in the United States from October 1999 through November 2005, when she departed the United States. 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 herself 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 husband 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).

In a letter dated November 23, 2005 the applicant's husband stated that the applicant's daughter has made insufficient progress in school due to her absences, and that school officials urge her return as soon as possible and state that she is at risk for losing high school credits. The AAO notes, again, that hardship to the applicant's daughter is not directly relevant to the approvability of the waiver application. That hardship would only be relevant if the applicant could demonstrate that her daughter's loss of high school credits would result in hardship to her husband.

In that letter the applicant's husband also stated that he has coronary stents and that living alone is not advisable. He also stated that he has no other relatives in Reno, Nevada, where he lives.

A Cardiology Consultation, dated June 6, 2002, states that the applicant's husband was then separated from a previous wife<sup>1</sup> and had five children. Medical records provided show that the applicant's husband received angioplasty and two coronary stents on June 7, 2002. A Progress Report dated June 3, 2003 stated that he is at high risk for progression of his heart disease.

A report dated September 25, 2006 states that the applicant's husband complained of pain in his right knee and was found to have possible small joint effusion (water on the knee) and minimal degenerative arthrosis (joint disease). Two other reports, also dated September 25, 2006, state that the applicant's husband complained of pain in his hands, and that they were found to have arthritic changes.

A Progress Report dated September 26, 2006 states that the applicant's husband has a history of coronary artery disease and has high cholesterol, but continues to smoke, is medically noncompliant, and had not previously been seen since June of 2004.

An undated note from [REDACTED] written on a sheet from a prescription pad from the Acadia Medical Group in Reno, Nevada states, "[The applicant's husband] has severe hand + joint pain that appears to be Rheumatoid Arthritis. He is currently being referred to a Rheumatologist." Whether the applicant's husband pursued that referral and, if so, the findings of the Rheumatologist, are both unknown to the AAO.

Other medical records provided are unremarkable.

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<sup>1</sup> The Form I-130 Petition for Alien Relative in the record shows that the applicant's husband divorced his previous wife on April 8, 1994, prior to marrying the applicant on August 12, 2003. Unless there was an intervening wife, the applicant's husband was divorced on June 6, 2002, rather than separated. The AAO presumes that this was merely a misstatement.

A brief, dated October 19, 2006 and submitted on appeal, stated that the applicant's husband "has worked the better part of his adult life in the United States." The brief also noted that the applicant's husband has been a U.S. citizen for over 16 years.<sup>2</sup> It further asserted that the applicant's husband has lived in the United States for over 24 years, but provided no corroborating evidence to support of that assertion.<sup>3</sup>

Although the statements by the applicant's husband<sup>4</sup> 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)).

The brief noted that the applicant's husband suffers from a rheumatic arthritic condition, and stated that he is therefore unable to care for himself, or requires some assistance in doing so. The brief stated that the applicant's husband has two children in the United States, one in California and one in Texas. The brief did not state where the applicant's husband's other three children, previously mentioned on the June 6, 2002 Cardiology Consultation, live. The brief stated that because those two children in California and Texas do not live in Reno, Nevada they are unavailable to help their father. It stated, "[The applicant's husband] has no one to live with him and assist him with [his] disability other than [the applicant]." It further stated that, "[The applicant's husband] has no desire to live in Mexico and after reaching 58 years of age cannot restart a career in Mexico."

The brief appears to be asserting that, although the applicant's husband's hands are ostensibly so incapacitated that he cannot care for himself without assistance, he is still working. The brief did not explain how that is possible or state the nature of the applicant's husband's occupation. Further, other than the implication in the brief, the record contains no evidence that the applicant's husband continues to work. Further still, the brief did not adequately explain why the applicant's husband's children are unable or unwilling to move to Reno, Nevada to help care for the applicant's husband, or why the applicant's husband is unable to move in order to live with, and receive assistance from, one of his children.

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<sup>2</sup> The applicant's husband's naturalization certificate shows that the applicant's husband became a U.S. citizen on July 3, 1990, which supports the assertion that on October 19, 2006, the date of that brief, he had been a U.S. citizen more than 16 years.

<sup>3</sup> Absent any evidence, the AAO declines to make the additional logical leap that the applicant was present in the United States 24 years prior to the date of that brief.

<sup>4</sup> The applicant is unrepresented and the brief is signed only by the applicant's husband. Its assertions and argument therefore purport to be those of the applicant's husband, notwithstanding that it refers to him in the third person.

Although the AAO cannot speculate as to what specific assistance the applicant's husband's children will provide, if any, given the lack of evidence that they now provide assistance, family ties are relevant to a determination of extreme hardship because family members can be expected to render some emotional, financial, and other support under normal circumstances.

The record contains no evidence, nor even argument, that the applicant's husband requires financial assistance from the applicant. The applicant has failed, therefore, to show that any financial hardship that might result to her husband as a result of her absence from the United States would, when considered together with the other hardship factors in this case, rise to the level of extreme hardship.

The record contains no evidence that the applicant's presence in the United States would, *per se*, assuage her husband's medical conditions, or that her absence is aggravating them. The medical hardship that would allegedly result from her absence from the United States is due to her inability to provide assistance and care if she lives elsewhere. The undated note from [REDACTED] supports the proposition that the applicant's husband's arthritis causes him pain, but provides no other support for the proposition that he is unable to live alone. No other evidence in the record provides any support for the proposition that the applicant's husband requires assistance. Further, as was noted above, the brief stated, but provided no evidence to support, that no other relatives or friends are available to help the applicant's husband. The record does not demonstrate that, if the applicant were removed to Mexico and her husband remained in the United States, the hardship he would suffer based on his medical conditions would, when considered together with the other hardship factors in this case, rise to the level of extreme hardship.

Another hardship factor to be considered, in the event the applicant is removed to Mexico and the applicant's husband remains in the United States, is the emotional hardship that it would cause to the applicant's husband.

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.

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.

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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d

390 (9<sup>th</sup> 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 evidence does not demonstrate that, if the applicant is removed to Mexico and her husband remains in the United States, this arrangement would cause emotional hardship to the applicant’s husband which, when considered together with the other hardship factors in this case, rise to the level of extreme hardship.

The remaining consideration is whether, if the applicant is removed to Mexico and her husband joins her to live there, this would cause him severe hardship. The appeal brief stated, “[The applicant’s husband] has no desire to live in Mexico.” This is manifestly insufficient to show extreme hardship. The appeal brief further stated that, “. . . after reaching 58 years of age [the applicant’s husband] cannot restart a career in Mexico,” but did not indicate whether the applicant’s husband, in light of his alleged disability, is still dependent on employment for his support. The appeal brief did not suggest any other factors that would cause hardship to the applicant’s husband, himself a native of Honduras, if he decided to live in Mexico. The evidence in the record does not show that any hardship that would result to the applicant’s husband from living in Mexico would, when considered together with the other hardship factors in this case, rise to the level of extreme hardship.

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 the applicant’s waiver application is not granted. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The AAO therefore finds that the applicant failed to establish extreme hardship to her 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.