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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
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OCT 01 2009

FILE: [REDACTED] Office: MEXICO CITY, MEXICO Date:
(CDJ 2004 800 446) (CIUDAD JUAREZ)

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:
[REDACTED]

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).

John F. Grissom
Acting 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. She 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 her last departure. She is married to a United States citizen. She 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 her admission would impose extreme hardship on a qualifying relative, her naturalized 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 District Director erred in his decision and that the applicant's husband will experience extreme hardship.

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 June 1997 and remained until she departed voluntarily in November 2005. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she 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, counsel’s brief; a statement from the applicant’s spouse; statements from friends and family of the applicant and her spouse attesting to the applicant’s moral character and the effect her exclusion has had on her spouse; copies of medical documents for the applicant’s spouse; a copy of the applicant’s spouse’s naturalization certificate; a copy of the birth certificate for the applicant’s granddaughter; and a copy of the marriage certificate for the applicant and her spouse.

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

Counsel asserts that the applicant’s exclusion will affect her daughter and granddaughter, which will in turn affect her qualifying relative husband; that the applicant’s spouse is struggling financially and has had to take a second job in order to support the applicant, her daughter and granddaughter; that

the applicant's spouse has become depressed and despondent; and is suffering from high blood pressure, high cholesterol and other heart disease related symptoms, which are exacerbated by the applicant's exclusion.

The AAO notes that the applicant's daughter and granddaughter are not qualifying relatives in this proceeding, and, as such, any hardship they would experience as a result of the applicant's inadmissibility is not directly relevant to a determination of extreme hardship. While the AAO acknowledges the statements in the record that indicate that the applicant's daughter and granddaughter are suffering emotionally due to the applicant's exclusion, it does not find the record to provide documentary evidence in support of these statements or to establish that the emotional impact on the applicant's daughter and granddaughter will result in hardship to the applicant's spouse, the only qualifying relative. Moreover, the AAO does not find the record to include a birth record for the applicant's daughter and, therefore, to establish her relationship to the applicant.

In this case, the record also fails to document the financial impact of the applicant's exclusion on the applicant's spouse. There is no documentation of the applicant's employment or income, or of the family's monthly financial obligations. Without such documentation, the AAO cannot determine the extent of the financial impact created by the applicant's inadmissibility or conclude that the applicant's spouse is suffering extreme financial hardship. The AAO also notes that, although counsel contends that the applicant is unable to find employment in Mexico, the record contains no documentary evidence in support of this statement, including published country conditions reports on the Mexican economy or unemployment in the region where the applicant resides.

With regard to the medical conditions of the applicant's spouse, the record does contain medical documentation. However, it is in the form of handwritten notes and test results from various laboratories. The AAO is not qualified to interpret a physician's medical observations or draw conclusions based on medical test results. As such, the information is not sufficiently probative of any medical condition the applicant's spouse may be suffering, and fails to detail how the applicant's presence might or might not impact his health. The medical documentation fails to establish that the applicant's spouse will suffer any physical or mental hardship based on the applicant's exclusion. Further, while the AAO acknowledges the emotional difficulty the applicant's spouse is experiencing as a result of his separation from the applicant, there is no documentary evidence that demonstrates that the emotional impact on him rises above that normally experienced by the relative of excluded aliens. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996). See also *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984) (holding that common results of the bar, such as separation, financial difficulties, etc., in themselves are insufficient to warrant approval of an application absent other greater impacts.)

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. Counsel asserts that, as the applicant's spouse is a native of Colombia, he could not relocate to Mexico with the applicant. He further asserts that there is no guarantee the applicant's spouse would be allowed to emigrate to Mexico to be with the applicant, that he would be unable to find employment, and that relocating would exacerbate his medical condition, all of which amount to extreme hardship. The record, however, fails to support these assertions. As noted above, the record does not establish that the applicant's spouse has any medical conditions, nor is there evidence that

he would be unable to have any particular medical condition treated in Mexico. In addition, as previously noted, there is no evidence that objectively establishes that he would be unable to find employment, or that the fact that he is Colombian would preclude him from residing in Mexico with the applicant. 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). In that counsel's assertions of hardship to the applicant's spouse are not sufficiently documented in the record, the AAO cannot conclude that the applicant's spouse would experience extreme hardship if he were to relocate to Mexico with the applicant.

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 would face 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 her 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 she 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.