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U.S. Citizenship
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OCT 01 2009

[REDACTED]

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, 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).

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, [REDACTED] 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 Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of her last departure from the United States. The applicant 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), in order to return to the United States to join her United States citizen husband, [REDACTED]

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, the applicant submits an additional letter from her husband. In support of the application, the record contains, but is not limited to, financial documents, children's birth certificates, evidence of the applicant's husband's service in the U.S. military, and statements from the applicant's husband. The entire record was reviewed and considered in rendering this decision.

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 shows that the applicant initially entered the United States without inspection in September 2003. The applicant remained in the United States until departing in August 2005. The

director found that the applicant accrued unlawful presence September 2003 until August 2005. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of her August 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of her last departure.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).

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 (BIA) 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 United States 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she 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 reflects that the applicant wed [REDACTED] a U.S. citizen, on September 19, 2002. [REDACTED] is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and [REDACTED] have a five year old U.S. citizen child, [REDACTED]. The applicant also has a thirteen year old U.S. citizen stepchild, [REDACTED] through her marriage to [REDACTED]. Hardship to the children will be considered insofar as it results in hardship to [REDACTED].

On appeal, the applicant's spouse asserts that the applicant suffers from severe depression and needs all the help she can get. He states that they have a ten-year-old daughter and a two-year-old daughter who live in the United States and depend on the applicant. He states that the applicant is the only one living in Mexico and is suffering from the separation. The applicant's spouse made similar assertions in the statement he initially filed with the waiver application. In that statement, he stated that due to the applicant's inadmissibility he has to deal with finding babysitters for his children. He further stated that the separation is a big financial burden. He noted that they have to worry about rent in the United States and in Ciudad Juarez, Mexico. He also noted that they have to worry about food, clothing, gasoline and babysitters. He stated that the situation is robbing the applicant of quality time with her children and him. He noted that there is more adequate care and access to social and medical institutions in the United States.

While the AAO will consider financial hardship as factor contributing to extreme hardship, such hardship must be documented in the record. The applicant's spouse has furnished copies of his utility and phone bills and bank statement. However, the record does not reflect his income and other major household expenses, such as rent and childcare expenses for both children. 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 AAO notes that the applicant stated on her immigrant visa application that she was unemployed during her residence in the United States, therefore, her absence has not resulted in a loss of household income for her spouse. The AAO notes further that the applicant's spouse's divorce decree reflects that his former spouse has primary custody of [REDACTED], indicating that the applicant's inadmissibility should have little impact on the expenses related to Jasmine. For these reasons, the AAO does not find that financial hardship due to the applicant's inadmissibility is demonstrated in the record.

In his statements, the applicant's spouse expresses concern over the applicant's depression, which he terms as severe. He notes that he does not trust the medicine or food in Mexico. He states that there is more adequate care and access to social and medical institutions in the United States. He states that the applicant is having a difficult time in Ciudad Juarez because it is an unsafe city.

The AAO will consider hardship to the applicant insofar as it results in hardship to her spouse. The AAO notes first that the applicant's spouse has not indicated the reason his wife could not reside in her hometown in Central Mexico, which he described in his initial letter as a "peaceful clam small town." Second, there is no medical documentation in the record related to the applicant's spouse's medical condition. The record does not contain a psychological evaluation, medical reports or correspondence, or copies of medical prescriptions, as evidence of her severe depression. Further, the record does not indicate whether she has sought medical treatment in Mexico for her depression and, if so, the level of care she received. As previously stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Although the applicant's spouse's assertions are relevant and have been considered, they can be afforded little weight in the absence of supporting evidence.

The AAO recognizes that the applicant's spouse and children are suffering emotionally as a result of their separation from the applicant. Their situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. While, in common parlance, the prospect of separation or involuntary 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 did not intend that a waiver be granted in every case where a qualifying relationship exists. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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).

Finally, the applicant's spouse has only addressed hardship related to his continued separation from the applicant. He and has not asserted, or submitted evidence to demonstrate, that he would suffer extreme hardship in Mexico if he relocated there. Accordingly, the AAO cannot determine that the applicant's spouse would suffer extreme hardship if he relocated to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility 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 remains entirely 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.