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[REDACTED]

FILE: [REDACTED]  
(CDJ 2004 782 586)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: **OCT 01 2009**

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. 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 married to a United States citizen. 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 December 12, 2006.

On appeal, counsel for the applicant states that the applicant's spouse will suffer extreme hardship if the applicant is excluded.

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 April 1997 and remained until he departed voluntarily in May 2003. As the applicant accrued unlawful presence for over a year and 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.

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; statements from the applicant’s spouse; photographs of the applicant and his spouse; a letter from the applicant’s employer, tax records and pay stubs for the applicant’s spouse; a statement from the applicant’s father-in-law; birth certificates for the applicant’s spouse and her siblings; copy of the section on Mexico from Country Reports on Human Rights Practices - 2005, published by the U.S. State Department.

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

The applicant’s spouse asserts that she suffers from depression and anxiety due to her separation from her husband, the applicant. While the AAO acknowledges the emotional stress of familial separation, the record does not establish that the emotional impact on the applicant’s spouse rises above that normally experienced by the relatives of aliens who have been excluded. Without

documentary evidence, the claims of the applicant's spouse, alone, are insufficient proof of extreme emotional hardship. 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 applicant's spouse asserts that she needs the applicant in the United States to assist with her with financial obligations, that she would like to start a family, that she would like to attend school but cannot pay bills and afford tuition, and that she feels sick but cannot go to the doctor because she cannot afford to miss work. The AAO acknowledges the assertions of the applicant's spouse. However, the record does not contain sufficient documentary evidence, such as income statements, or bills or other evidence of debt, that corroborates her claim of financial hardship. As noted above, without sufficient evidence to support her assertions the applicant's spouse's statements are insufficient proof that she is experiencing financial hardship. *Id.* In addition, the AAO notes that the applicant's inability to attend school and her desire to start a family are not factors that establish extreme hardship, as this requirement was not enacted to ensure that the family members of excludable aliens fulfill their dreams or continue the lives they currently enjoy. *Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994). As such, the assertions of the applicant's spouse do not establish that she would experience extreme hardship if the applicant were to be excluded and she remained in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. In this case, counsel for the applicant asserts that the applicant's spouse has no family in Mexico, that all of her immediate family resides in the United States and that she would not have access to medical care if she fell ill in Mexico. The applicant's spouse asserts that she is unable to relocate to Mexico because she is the main caretaker for her parents who suffer from several medical conditions, that she transports them to doctors' visits, administers their medications and translates for them. The applicant's spouse also claims that she would be unable to find commensurate employment or continue her education if she relocated to Mexico with the applicant. The record includes a statement from the applicant's spouse's father in which he asserts that the applicant's spouse assists him and his wife with their medical needs. It also contains two medical statements that establish that the applicant's spouse's parents are receiving treatment in the United States for various medical conditions.

While the record contains sufficient evidence to support the applicant's spouse's claim that she assists her parents with their medical needs, it does not establish that she is their only caretaker. Counsel states that the applicant's spouse has several siblings in the United States and the record does not indicate that they are unable or unwilling to assume responsibility for the care of their parents in the applicant's spouse's absence. It should be noted that a statement from [REDACTED] indicates that the applicant's spouse's father attended an appointment with his son, who translated for him. Thus, the record does not establish the applicant's spouse's parents would not have their healthcare needs met should the applicant's spouse relocate to Mexico.

The record contains a copy of the section on Mexico from Country Reports on Human Rights Practices – 2005, published by the U.S. State Department, as well as a document containing statistical data on access to health care and education in Tenochtitlan, Guerrero, Mexico, where the applicant lives. The AAO acknowledges the content of these documents, but finds they are not sufficiently probative of the individual applicant's situation to establish the assertions of the applicant's spouse – namely that she would be limited to minimum wage employment and have no access to healthcare in Mexico. The record does not establish that the applicant's spouse would be limited to employment earning the minimum wage. Neither does it contain any documentation indicating that the applicant's spouse has any immediate medical conditions. Therefore, counsel's assertions about the lack of medical care in the event of a potential health problem is not relevant. *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984). Further, the record fails to establish that the applicant and his spouse would not be able to reside elsewhere in Mexico. The AAO also notes that the fact that economic, educational, and medical facilities and opportunities may be better in the United States than in the country of relocation does not, in itself, establish extreme hardship. *Matter of Ige*, 20 I&N 880 (BIA 1994). Accordingly, the evidence in the record fails to establish that the applicant's spouse would suffer extreme hardship if she 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 spouse would face extreme hardship if he is refused admission. The AAO recognizes that the applicant's spouse would endure hardships based on the applicant's inadmissibility. The record does not, however, distinguish her hardships from those commonly associated with removal and separation, and they do not, therefore, 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.