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U.S. Citizenship
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OCT 01 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, 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 U.S. citizen spouse, [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's spouse asserts that his U.S. citizen daughter is now residing with the applicant in Mexico. He states that he has been separated from his wife and daughter for over one year. He contends that this is extreme hardship on the entire family.

The applicant's spouse indicated that he would submit a brief and/or evidence within 30 days of filing the appeal notice. The appeal notice was filed on November 20, 2006. As of the date of this decision, the AAO has not received any additional documentation from the applicant. The record, therefore, will be considered complete for purposes of rendering a decision on the appeal. In support of the application, the record contains, but is not limited to, statements from the applicant and her spouse. 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 entered the United States without inspection in November 2001. The applicant remained in the United States until departing in April 2005. The director found that the applicant accrued unlawful presence from November 2001 until April 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 April 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 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 October 30, 2003. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and her spouse have a five year old U.S. citizen child, [REDACTED]

Hardship to the applicant's child will be considered insofar as it results in hardship to her spouse.

The record contains a letter from the applicant's spouse that was initially filed with the waiver application. The applicant's spouse asserts in this letter that if the applicant was forced to stay in Mexico, his child's future would be dimmed and she would suffer greatly. He states that his child needs the applicant's moral, psychological and parental support. He states that he needs the applicant in the United States for moral and economic support. He states that the separation of the family would be an extreme emotional and psychological hardship on his child and him. On appeal, the applicant's spouse asserts that his daughter is now residing with the applicant in Mexico. He states that he has been separated from his wife and daughter for over one year. He contends that this is extreme hardship on the entire family.

The AAO recognizes that the applicant's spouse is suffering emotionally as a result of his separation from the applicant and his daughter. His 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). "[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).

The applicant's spouse further asserts in his letter that he maintains the monthly expenses such as rent, utilities, food, clothing, transportation and other daily needs. He states that without the applicant's presence, he would have to pay a child care provider and a housekeeper. He states that this would result in an extreme financial burden on his U.S. citizen child and himself. The AAO notes that on appeal the applicant's spouse failed to discuss how his daughter's relocation to Mexico has changed his financial situation. The AAO notes further that the record does not contain any documentation related to the applicant's spouse's employment, income and expenses. As such, the AAO does not have sufficient documentation to fully assess the applicant's financial situation. 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)). Although the applicant's spouse's unsupported 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 inadmissibility may cause some economic detriment to her spouse. However, a reduction in standard of living is a typical hardship of individuals separated as a result of inadmissibility, and does not, alone, rise to the level of extreme hardship. U.S. courts have held that 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); *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); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) ("the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.").

The record contains a statement from the applicant that was filed with the initial waiver application. In addition to the aforementioned assertions of hardship, the applicant states that she has strongly embraced and deeply immersed herself in the social and cultural life of the United States. She states that the emotional and psychological impact of her readjustment in Mexico would be an extreme hardship on her. She states that it would be very difficult for her to find employment in Mexico and the pay is so low that she would not be able to provide for herself. She notes that she has several extended family members who are U.S. citizens and U.S. lawful permanent residents. She states that it would be an extreme emotional and psychological hardship on her entire family if she were removed or deported to Mexico.

The AAO finds that the aforementioned statements address the hardships the applicant and her extended family member would suffer if she were refused admission. Section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to the applicant, the applicant's child, and extended family members. In the present case, the applicant's spouse is the only qualifying relative under the statute, and the only relative for whom the hardship determination is permissible. Therefore, the applicant's statements of hardship to herself and her extended family members are not relevant for purposes of these proceedings.

Finally, the record only discusses the hardships the applicant's spouse would suffer if he remains in the United States. The applicant and her spouse have not asserted, or submitted evidence to demonstrate, that the applicant's spouse would suffer extreme hardship in Mexico if he relocated with the applicant 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.