

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H2

OCT 01 2009

FILE:

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

IN RE:

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's spouse asserts that his daughter, who resides with him in the United States, is heartbroken because of her separation from the applicant. In support of the application, the record contains, but is not limited to, letters from the applicant's spouse, a letter from the applicant's spouse's cousin, a letter from the applicant's child, [REDACTED] letters from the applicant's spouse's employer, and documentation from [REDACTED].<sup>1</sup> 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

---

<sup>1</sup> The record also contains two letters written in Spanish without corresponding certified English translations. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

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 November 2000. The applicant remained in the United States until departing in January 2006. The director found that the applicant accrued unlawful presence from November 2000 until January 2006. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of her January 2006 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 February 25, 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 an eight year old U.S. citizen child, [REDACTED] and a nine year old U.S. lawful permanent resident child, [REDACTED]. Hardship to the applicant's children will be considered insofar as it results in hardship to the applicant's spouse.

On appeal, the applicant's spouse asserts that his child, [REDACTED] resides with him in the United States, while his younger child, [REDACTED] resides in Mexico with the applicant. He states that he travels out of town for his job, requiring him to leave his daughter with a babysitter or a family member. He states that his daughter needs her mother and is really sad. He states that his family is separated and his daughters need their mother and he needs his wife. The record contains two identical letters, dated April 20, 2007 and March 2, 2007, from the applicant's spouse's employer, [REDACTED]. [REDACTED] states in his letters that the applicant's spouse assists the foreman of the crew specializing in metal roof installation. He states that the applicant's spouse has more than once volunteered to work out of state for extended periods of time. [REDACTED] letter indicates that the applicant's spouse's out-of-town travel is on a volunteer basis, and is not a requirement of the position. As such, the AAO cannot find that the child care related difficulties the applicant's spouse is facing as a single parent rise to the level of extreme hardship.

The applicant's spouse further asserts that if his wife and daughters reside in Mexico he would not be able to see his wife and watch his daughters grow up. He states that his daughter wants her mother and her younger sister to reside in the United States. He states that he and his daughter are suffering from their separation from the applicant and his younger daughter. The AAO recognizes that the applicant's spouse and daughter are suffering emotionally as a result of their family separation. 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 (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).

Finally, the applicant's spouse asserts that his oldest daughter became ill from the food in Mexico, lost a lot of weight, and he had to bring her to the United States. The record reflects that the applicant's spouse

indicated in the letter he initially filed with the waiver application that his daughter, [REDACTED] has a stomach problem, allergies to certain foods, and is being taken to the physician. The AAO will consider medical hardship to the applicant's daughter as a factor contributing to a finding of extreme hardship to the applicant's spouse. However, [REDACTED] stomach condition and allergies are not **demonstrated in the record**. The record does not contain copies of medical reports, medical correspondence, prescriptions, or health insurance records, as evidence of her treatment for a medical condition. Further, the record does not indicate whether she has sought medical treatment in Mexico for her stomach condition, and if so, the level of care she received. 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 assertions are relevant and have been considered, they can be afforded little weight in the absence of supporting evidence. For this reason, the AAO cannot conclude that the applicant's daughter is suffering from a medical condition that would contribute to a finding of extreme hardship to the applicant's spouse if they joined the applicant in 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.