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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE:

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Office: CHICAGO, IL

Date:

SEP 17 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, Chicago, Illinois. 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 lawful permanent resident (LPR). 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 LPR spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 19, 2006.

On appeal, counsel for the applicant states that the applicant's spouse would suffer extreme hardship if the applicant were removed from the United States.

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 1985. In 1991, she married her LPR spouse who filed a Form I-130, Petition for Alien Relative, on her behalf. The initial application was denied, but a subsequently filed Form I-130 was approved on September 4, 1996. The applicant then filed a Form I-817, Application for Voluntary Departure Under the Family Unity Program, on January 20, 1998. The application was approved on May 11, 1999, valid

for a two year period through May 11, 2001.¹ The applicant subsequently applied for a “V” visa and departed the United States in October of 2003 to obtain her V visa, triggering the unlawful presence provisions of the Act. As the applicant entered the United States without inspection in 1985, she accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, through January 20, 1998, the date she filed for voluntary departure under the Family Unity Program, and from May 12, 2001, following the expiration of her authorized stay under the Family Unity Program, until October 2003, when she departed the United States to obtain her V visa. This constitutes a period greater than one year. As the applicant accrued one or more years of unlawful presence in the United States 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).

¹ The AAO notes that the applicant failed to file for an extension under the Family Unity Program until October 30, 2001.

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; correspondence between the applicant and United States Citizenship and Immigration Services (USCIS); letters from various employers of the applicant and her spouse; and tax records and pay stubs for the applicant and her spouse.

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

Counsel for the applicant states that the applicant's spouse would suffer extreme hardship if he relocated with the applicant to Mexico because he has no family ties in Mexico, has family and community ties in the United States and has lived in the United States since 1980. Counsel further states that the applicant's spouse has no specific trade or skills, would be unable to obtain employment in Mexico, and would lose his LPR status if he were to return to Mexico. While counsel's assertions are largely unsupported by the record, the AAO notes the potential loss of the applicant's spouse's LPR status if he were to move to Mexico and finds that the applicant has established that relocation would result in extreme hardship to a qualifying relative.

As previously noted, the applicant must also establish her spouse would suffer extreme hardship if she were to be excluded and he remained in the United States. *Counsel for the applicant asserts the applicant's spouse would suffer extreme economic hardship if his wife were to be removed from the United States because he would be unable to assume all of the financial responsibilities of their household. He also states that the applicant would suffer extreme emotional hardship if his wife were removed because they have been married and living together for 15 years.*

Counsel's assertions that the applicant's spouse would suffer economic hardship are not sufficiently documented. While the record contains financial documentation submitted in conjunction with a Form I-864, Affidavit of Support under Section 213A of the Act, no evidence submitted in support of the applicant's waiver application is probative on the issue of economic hardship. Counsel cites statistics with regard to unemployment in Mexico, but the record does not contain any documentation in support of these statistics, nor is there any specific evidence of the applicant's spouse's financial situation. The record contains no breakdown of the current monthly financial obligations of the applicant's spouse, or proof of his current employment and earnings. In addition, it has been asserted that the applicant's spouse's brother resides with him. However, the record does not indicate the amount of income the applicant's spouse's brother provides to the household or that he would be unable to assist the applicant's spouse in maintaining the household in the event of the applicant's removal.

The record also fails to provide any documentary evidence, e.g., an evaluation by a licensed mental health practitioner, that establishes that the removal of the applicant would result in emotional hardship for her spouse beyond that normally associated with the separation of a husband and wife. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the

applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the record does not establish that the applicant's spouse would suffer extreme financial or emotional hardship if his wife were removed and he remained in the United States.

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. The AAO recognizes that the applicant's husband will experience hardship due to his wife's inadmissibility. However, the record does not distinguish his hardship from the hardship commonly associated with removal and separation, and, therefore, it does not 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 failed to establish extreme hardship to her LPR 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.