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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:

(CDJ 2004 758 478)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: SEP 25 2009

IN RE:

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:

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, 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. 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 naturalized United States citizen and has two U.S. citizen and two lawful permanent resident children. 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 U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 14, 2006.

On appeal, the applicant's spouse states that he and his family are suffering extreme hardship.

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 1991 and remained until October 2005, when she departed voluntarily to Mexico. Therefore, the applicant accrued unlawful presence in the United States for over a year, from April 1, 1997, the effective date of the unlawful presence provisions of the Act until October 2005, and is now seeking admission within ten years of her last departure from the United States. Accordingly, the applicant is

inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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: statements from the applicant’s spouse and family; a medical statement for one of the applicant’s daughters; a medical record for the applicant’s spouse; copies of money transfers sent to the applicant by her spouse; a letter from a friend regarding the applicant’s daughters; a statement from the director of a Mexican school; a copy of the applicant’s spouse’s naturalization certificate; and a copy of the applicant’s and her spouse’s marriage certificate.

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

The applicant's spouse asserts that he needs his wife in the United States to take care of him as he has severe medical problems, that her daughters need their mother in the United States because they are teenagers and should have a mother present to discuss private issues with them, and that he and his family are having difficulties maintaining the household in the applicant's absence.

The AAO notes that children are not considered qualifying relatives in a 212(a)(9)(B)(v) proceeding, and as such any impact on them is not directly relevant to a determination of extreme hardship. In this case, the record includes statements from two of the applicant's daughters and her son. The daughters state that they need their mother in the United States to help them with their homework and discuss private issues. The applicant's son states that having to cook and clean and do laundry is creating an extreme hardship for him and that, if the applicant is allowed to return, he will be able to attend college. While the AAO acknowledges the statements of the applicant's children, the record fails to contain any documentary evidence that establishes how their mother's absence is affecting them. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Absent evidence that distinguishes their hardship from that commonly experienced by the family members of excluded aliens, the statements from the applicant's children are insufficient proof that they are experiencing extreme hardship in their mother's absence.

The record also contains a statement from the director of a Mexican school who asserts that the applicant needs to return to the United States to care for her children as their father has to work long hours and is not in good health. In a second statement, a friend of the applicant also contends that the applicant's children are in need of her care. This same observation is made by [REDACTED] who, in a third statement, observes that because of "teenage health and psychological issues," the applicant's daughter, [REDACTED] would be best helped if her mother were with her. Dr. [REDACTED] however, fails to specify the health and psychological issues to which he refers, their severity or how they are affecting the applicant's daughter. While the AAO notes the statements from the Mexican school director and the applicant's friend, they, like the statements of the applicant's children, are not supported by documentary evidence. The medical statement from Dr. [REDACTED] offers insufficient detail to determine the nature or extent of the hardship he documents. Moreover, as previously noted, children are not qualifying relatives for the purposes of this proceeding and the record fails to demonstrate how the hardship they are experiencing affects their father, the only qualifying relative.

The record includes medical documentation for the applicant's spouse, which indicates that the applicant was admitted to the hospital for a peri-rectal abscess and was discharged the same day. There is no other documentation or indication of any permanent or impending medical condition for the applicant's spouse. There is nothing in the record that indicates that the applicant's spouse has a continuing medical condition or that he is unable to care for himself. Accordingly, the record fails to support the applicant's spouse's claim that he is suffering from a medical condition that requires the applicant's care.

The applicant's spouse asserts that he is having trouble paying bills, that his youngest son has had to discontinue his higher education to get a job and help support the family, and that he is unable to provide enough money for his wife and one of his daughters, who is living with her mother in Mexico, and support his family in the United States. The AAO acknowledges the assertions of the applicant's spouse and notes that the record contains copies of money transfers to the applicant. However, it does not find the record to contain any objective evidence of financial hardship. There is no evidence of the income earned by the applicant's spouse or his financial obligations, and no evidence that the applicant would be unable to obtain employment in Mexico in order to support herself and her daughter. Even in a light most favorable to the applicant, mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. John Ha Wang*, 450 U.S. 139 (1981). See also *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984) (holding that common results of the bar, such as separation, financial difficulties, etc., in themselves are insufficient to warrant approval of an application absent other greater impacts.) As such, the record fails to establish that the applicant's spouse will experience extreme hardship if his wife is excluded and he remains in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. In the present case, the applicant has not asserted that her spouse would experience any hardship if he were to join her in Mexico. As such, the record does not indicate that the applicant's spouse would suffer extreme hardship if he were to relocate to Mexico.

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 faces extreme hardship if his wife is refused admission. 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 her 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 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.