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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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Services

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FILE:

CDJ 2004 810 605

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:  
SEP 29 2009

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).

Perry Rhew  
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. He 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 his 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 his U.S. citizen spouse, [REDACTED]

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his 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 she is now the only wage earner and it is impossible for her to assume any additional hours of work to keep financially afloat. In support of the waiver application, the record contains, but is not limited to, a statement from the applicant's spouse, financial documentation, school records and employer letters.<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 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

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<sup>1</sup> The record contains two letters from the applicant's spouse 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.

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 1996. The applicant remained in the United States until departing in November 2005. Time in unlawful presence begins to accrue on April 1, 1997, the date of enactment of unlawful presence provisions under the Act. The applicant accrued unlawful presence from April 1, 1997 until November 2005. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of his November 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 his 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 himself 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 naturalized U.S. citizen, on August 26, 2002. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant's spouse has three children from her prior marriage, [REDACTED] 25 years old, [REDACTED] 23 years old, and [REDACTED] 21 years old.

The applicant's spouse asserts that of her three children two of them are in college and depending on her and the applicant. She states that when the applicant was in the United States, they covered their home expenses and helped the children continue their education by paying their tuition and room and board. She states that now that the applicant is in Mexico she is the only wage earner and it is humanly impossible for her to assume any more hours of work to keep financially afloat.

The applicant's spouse furnished copies of tuition statements for her children, [REDACTED] and [REDACTED] and a copy of [REDACTED] housing rental agreement, as evidence of financial hardship. She also furnished a car repair estimate with a note that [REDACTED] needs major repair on his car and she cannot afford to have the work done. The AAO notes that the aforementioned statements address the hardship to the applicant's stepchildren as a result of the applicant's inadmissibility. 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 as to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant's child. In the present case, the applicant's spouse is the only qualifying relative under the statute, and the only relatives for whom the hardship determination is permissible. The AAO notes further that the applicant's daughter, [REDACTED], was 18 years old and her son, [REDACTED] was 20 years old at the time she filed the appeal. The applicant's spouse's inability to financially support her adult children and pay for their college expenses does not necessarily result in extreme hardship. Rather, it represents the hardship typical of most families in the United States whose children rely on financial aid and student loans to finance college expenses.

The applicant's spouse also furnished as evidence of her financial hardship several bills and late payment notices. The record contains a letter from her employer, Decatur County Manor, Inc., dated September 22, 2006, which provides that she is employed as a certified nursing assistant. However, the record does not contain copies of her earnings statements, most recent Form W-2 and tax return, or any other evidence of her income. As such, the AAO does not have sufficient documentation to fully assess the applicant's spouse'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)). While the applicant's spouse's unsupported assertions are relevant and have been considered, they are of little weight in the absence of supporting evidence. Furthermore, the applicant's spouse has failed to explain the significance of several of the submitted financial documents. For instance, she furnished a billing statement from the DISH Network, a satellite television company, and an auto insurance billing statement issued for the applicant's 1995 Ford Mustang. The applicant's spouse's decisions to continue her satellite television service and

maintain her husband's car while he is in Mexico are not characteristic of an individual who is suffering from financial hardship.

The AAO recognizes that the refusal of the applicant's admission to the United States may cause some economic detriment to his spouse. However, a reduction in her standard of living does not necessarily result in 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 applicant's spouse asserts that if her husband is not granted an immigrant visa, she will have to take her children out of school and bring everyone back to Mexico. She states that Mexico is a country where it will be very hard to live, survive or continue to achieve the goals that they have set in life.

The applicant's spouse has failed to indicate the reasons her adult children would not be able to continue their residence and education in the United States if she moves to Mexico. Moreover, her statement that it will be very hard to live, survive and achieve goals in Mexico is a broad generalization. She has failed to quantify the anticipated hardship she would suffer in Mexico with concrete examples or references to specific concerns. Accordingly, the AAO cannot determine that the applicant's spouse would suffer extreme hardship if she 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 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 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.