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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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JAN 22 2010

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
CDJ 2004 660 253 (RELATES)

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:

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, and the application will be denied.

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 Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the facts of the case, when considered in the aggregate, clearly establish extreme hardship to the applicant's spouse and daughter. Counsel states that the factors include family separation, financial hardship and severe emotional distress.

In support of the application, the record contains, but is not limited to, a brief from counsel, three psychological evaluations of the applicant's spouse, medical documentation related to the applicant's mother and mother-in-law, financial documentation, the applicant's family members' identity documents, attestations from the applicant's spouse, documentation of a remittance to the applicant, the applicant's spouse's school transcript, documentation related to the applicant's father-in-law's death, and family photographs.

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.

¹ The applicant also listed his father, [REDACTED] as a U.S. lawful permanent resident on his Form I-601. However, the applicant failed to provide any evidence of hardship to his father if the applicant is denied admission to the United States. Therefore, based on the current record, the AAO cannot determine whether the applicant's father would suffer extreme hardship if the applicant's waiver is denied and the applicant is refused admission to the United States.

....

(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 March 2000. The applicant remained in the United States until departing in February 2006. The applicant accrued unlawful presence from March 2000 until February 2006. The applicant is attempting to seek admission into the United States within ten years of his February 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 his last departure. The applicant does not dispute his inadmissibility on appeal.

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 U.S. citizen, on June 1, 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 and his spouse have a six-year-old U.S. citizen child, [REDACTED] who is residing in Mexico with the applicant. Hardship to the applicant's child will be considered insofar as it results in hardship to the applicant's spouse.

On appeal, counsel asserts that the applicant's spouse was enrolled in the LPN (licensed practical nurse) program at Kankakee Community College until the summer of 2006. Counsel states that once the applicant and returned to Mexico, his spouse was forced to work full-time during the day to support herself and her family. Counsel states that the applicant's spouse's stress of being separated from her family and working full-time while attending night classes is so great that she did not pass her last semester in the program.

Counsel further asserts that the applicant's earned \$26,474.18 in 2005 according to his tax returns. Counsel states that the applicant is no longer working because he could not find a job in Mexico and he is the primary caretaker of his daughter. Counsel states that the applicant's spouse earned \$10,765.00 according to her 2006 Form W-2. Counsel notes that the applicant's spouse sends money to Mexico to support her family and she has the added expense of flying to Mexico to see her family. Counsel states that the applicant's spouse is now living below the federal poverty level. Counsel states that because of financial hardship, the applicant's spouse cannot afford a babysitter and her child must remain with the applicant in Mexico.

Finally, counsel asserts that the applicant's spouse witnessed her father's death from a heart attack in 1997. Counsel states that the applicant's father-in-law had been the applicant's spouse's sole caregiver because the applicant's mother-in-law has suffered from bipolar disorder and has been medicated since the applicant's spouse was young. Counsel states that the applicant was able to fill the hole in his spouse's life that was left by his father-in-law's death. Counsel states that because of financial hardship, the applicant's spouse is forced to live with her mother. Counsel states that the applicant's spouse is suffering emotionally living in her family home with reminders of her father and because of her mother's illness. Counsel states that the applicant's spouse is suffering emotionally and is feeling like a "terrible mother" because of her separation from her young daughter.

The record contains the following relevant documentation as corroborating evidence:

- A psychological assessment of the applicant's spouse from [REDACTED] and [REDACTED], of [REDACTED], dated March 1, 2007. The assessment reflects that the psychologists interviewed the applicant's spouse on February 22, 2007 and

diagnosed her with recurrent Major Depressive Disorder and having a risk of Major Depressive Disorder with Psychotic Features. The assessment provides, in part, [REDACTED] needs to have the support of family at this time. The conflictual relationship with her mother and the death of her father have left her struggling to find this support. The financial and emotional support of her spouse may assist her in obtaining treatment that she needs at this time.”

- A psychiatric evaluation of the applicant’s spouse from [REDACTED] of Psychiatric Associates, Kankakee, Illinois, dated December 3, 2007. [REDACTED] diagnosed the applicant’s spouse with a single episode of Major Depressive Disorder and placed her on the antidepressant, Lexapro. The applicant’s spouse was instructed to return in three weeks. An addendum to the evaluation states that the applicant’s spouse’s medication was increased from 10 mg. to 30 mg. The addendum notes that although the applicant’s spouse is doing better, she continues to have episodes of depressed mood around the loss of her husband and daughter.
- A letter from [REDACTED] of Riverside Psychiatric Associates, Kankakee, Illinois, dated June 19, 2009. [REDACTED] states in her letter that the applicant’s mother-in-law is under treatment for Bipolar Disorder with Psychosis and “benefits from a very strong support system.” [REDACTED] notes that, “It would help her continue to recover emotionally if her son-in-law were present and part of the support system.”
- A psychological assessment from [REDACTED] of the Latino Social Workers Behavioral Health and Consulting Services, Inc., Oak Park, Illinois, dated February 1, 2009. [REDACTED] states in her evaluation that the applicant’s spouse is experiencing severe emotional, financial, and psychological trauma as a result of her separation from the applicant and her daughter. [REDACTED] asserts, “The absence of her immediate family has likely contributed to her feelings of loss and isolation and symptoms of sadness, weight loss and sense of helplessness, which has led to a Major Depressive Disorder. . . . Not having physical contact with her daughter can potentially have long-term negative consequences to their healthy attachment.”
- An affidavit from the applicant’s spouse, dated March, 1, 2007, which reiterates counsel’s assertions regarding the financial and emotional hardships the applicant’s spouse is suffering as a result of her separation from the applicant and daughter. The applicant’s spouse states in her affidavit, “I have been very depressed and unable to focus since my separation from [REDACTED] and my daughter. I feel like I am not being a good mother by having my daughter living away from me, in Mexico, but I have no choice. . . . I feel like a terrible mother because she cannot [sic] stay in the U.S. and live with me, but I don’t have anyone that I can afford to pay to watch [REDACTED]. She also explains that, “Living with my mother, [REDACTED], has been very difficult. My mom and I were never really close. . . . My mom has been diagnosed with bipolar disorder and has been extremely medicated since my childhood. . . . Living with her and away from my husband and child only makes me feel more alone.”

The AAO has reviewed the evidence in the present case and finds that the hardships faced by the applicant’s spouse as a result of separation from the applicant, considered in the aggregate, rise to

the level of extreme hardship. The evidence in the record demonstrates that as a result of the applicant's inadmissibility, his spouse has been diagnosed by three mental health professionals as having Major Depression. Further, the applicant's spouse indicates in her affidavit that because of financial hardship she does not have health insurance and cannot afford medical treatment. Moreover, the applicant's spouse's financial hardship has resulted in severed ties with her six-year-old daughter who now resides in Mexico with the applicant and the applicant's mother. Finally, the record indicates that the applicant is only individual his spouse can rely on to provide her with emotional support as her mother is suffering from Bipolar Disorder with Psychosis and her father is deceased. The AAO therefore finds that the applicant has established that his wife would suffer extreme hardship if they remain separated due to his inadmissibility.

Extreme hardship to the applicant's spouse must also be established in the event that she accompanies the applicant to Mexico. Counsel asserts that if the applicant's spouse were to accompany the applicant to Mexico she fears she will have to abandon her education, which was the future source of steady employment for her family, and the way of life she knows.

The applicant's spouse makes the following assertions in her affidavit regarding her residence in Mexico:

Even if I went to Mexico after finishing the [LPN] degree, I would not be able to find a job there to apply this training. While I can speak Spanish, English is my first language and the language that I received all of my formal education. I do not believe that I have received enough formal Spanish language training to be able to pass a foreign licensing exam.

I have been to Mexico four times since my husband has left. At night there is no running water and they have to fill a big barrel full of water from the hose. There are also many rats and cockroaches at my mother-in-law's house. The bathroom is outside and is not connected to the house. The house is made of concrete so it can get very cold at night.

The AAO has given serious consideration to the applicant's spouse's assertions, but finds that they fail to clearly illustrate the hardship she would suffer if she were to relocate with the applicant to Mexico. The applicant's spouse has indicated in her affidavit that she speaks Spanish and after her marriage to the applicant they resided for several years with the applicant's father in a Mexican household. Furthermore, there is no evidence in the record to indicate that the applicant's spouse has researched employment opportunities in Mexico. Nor is there any evidence of her attempt to learn about the foreign licensing exam for health care workers in Mexico.

The AAO recognizes that the applicant's spouse's relocation to Mexico may result in a reduction in her standard of living. However, this factor alone 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.”).

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.