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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date:

MAY 12 2010

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)
of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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).

A handwritten signature in black ink that reads "Michael Shumway".

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 is a native and citizen of Mexico who 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 readmission within ten years of his last departure from the United States. The applicant is the spouse of a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated September 14, 2007, the district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse as a result of his inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

In a Notice of Appeal to the AAO dated October 10, 2007, the applicant's spouse states that the applicant is the one who supported the family economically and that she is now ill and cannot work, and as a result, the family is going through a very hard time.

The record indicates that the applicant entered the United States without inspection in April 1990. The applicant remained in the United States until May 2006. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted, until May 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of his May 2006 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(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 Attorney General [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 AAO notes that section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's spouse. Hardship to the applicant is not considered under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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 in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 and 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 of hardship includes a statement and a letter from the applicant’s spouse, two letters regarding the applicant’s spouse’s medical condition, two letters from the applicant’s children’s school, letters from the applicant’s children and stepchildren, a letter from the family’s pastor, and a two documents in Spanish.

Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner’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.

In a statement dated October 10, 2007, the applicant’s spouse states that she and the applicant have two children together and that she also has four children from a previous marriage. She states that her children cannot depend on her economically as she suffers from high cholesterol, thyroid problems, stress, nerves and depression. She states that she cannot work and that she does not have enough money to support her family. She also states that having her husband in Mexico is causing the children to have problems in school and to feel depressed. Finally, she states that the applicant is not able to find consistent work in Mexico and can go for several weeks without working.

The applicant’s spouse’s doctor, [REDACTED], states in a letter dated September 28, 2007 that the applicant’s spouse is currently under his care for hypothyroidism, hypercholesterolemia, and depression. The record also includes an appointment notice showing that the applicant’s spouse had an appointment with [REDACTED] on October 25, 2007 at 11:30 a.m.

In a letter dated October 10, 2007 the manager of [REDACTED] where the applicant's children attend, states that the school believes it is best for the child to have both parents at home. In a letter dated October 8, 2007, [REDACTED] the speech-language therapist at [REDACTED] states that the applicant's children have severe speech needs that require therapy. She states that the psychological and emotional damage that could result from separating the family is enormous. She also states that if the children relocated to Mexico they would not have access to free speech therapy and they would have to learn in Spanish.

The record also includes a joint letter from the applicant's four stepchildren which states that the applicant is the only financial provider for the house, that they miss him, and that they especially feel that their two youngest siblings need to have the applicant in the United States.

Finally, the record includes a letter dated May 2, 2006 from the reverend at the applicant's church. [REDACTED] states that the applicant's spouse has two children with the applicant and four children from a former marriage who still live with her.

The AAO finds that the applicant has established that his spouse is suffering extreme emotional hardship as a result of separation. The applicant's spouse states that she is suffering from depression and she provides supporting documentation for this assertion in the form of a letter from her treating doctor. The applicant's doctor states that the applicant is currently being treated for depression and the applicant's spouse includes a notice of her next appointment with the doctor indicating that she is receiving continuous care for her condition.

However, the AAO cannot find that the applicant's spouse would suffer extreme hardship upon relocation to Mexico because the record lacks documentation to support the applicant's spouse's hardship claims. 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)). The AAO recognizes that the applicant's spouse is being treated for numerous medical issues and that her children receive special help in school, but the applicant has not submitted supporting documentation showing that his spouse and the children would not be able to receive treatment in Mexico. In addition, the applicant's spouse states that the applicant cannot find work in Mexico, but does not provide documentation to support this assertion. Furthermore, the AAO notes that the applicant's spouse has four children from a previous marriage who are still living with her, but does not provide any information regarding whether upon the applicant's spouse's relocation, these children will stay in the United States or relocate to Mexico. Thus, the AAO finds that the current record does not indicate that it would be an extreme hardship for the applicant's spouse to relocate to Mexico.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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(h) 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.