

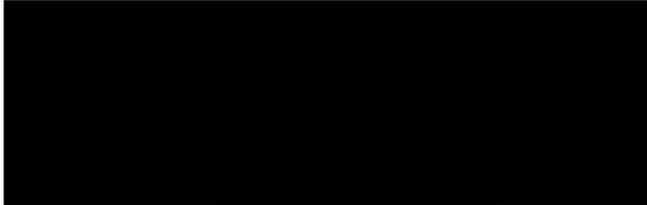
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

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**U.S. Citizenship  
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FILE:

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Office: MEXICO CITY, MEXICO  
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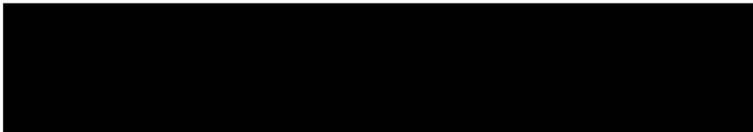
Date: APR 01 2009

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. section 1182(a)(9)(B)

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, 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 from the United States. She is married to a U.S. citizen and has a U.S. citizen daughter. 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 Ground of Excludability (Form I-601) on March 27, 2006.

On appeal, counsel for the applicant contends United States Citizenship and Immigration Services (USCIS) abused its discretion by denying the waiver application because it failed to accurately evaluate the evidence of record, ignored key facts and deviated from other decisions in virtually identical cases.

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 in October 1999 without inspection, and resided in the United States until April 2005, when she voluntarily departed to Mexico. Therefore, the applicant was unlawfully present in the United States for more than one year, from

October 1999 until April 2005, and is 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 to a determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 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 relocates with 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 of proceeding contains the following relevant evidence:

1. Statements from the applicant's husband asserting that he and his daughter are suffering due to the exclusion of his wife, that his daughter was unable to live in Mexico because she repeatedly became ill with fever and diarrhea and had other medical problems, and that having to relocate to Mexico would damage his career.

2. Statement from the employer of the applicant's spouse, asserting that he is one of the business' "star employees," that the separation from his wife has been difficult for the applicant's spouse and his daughter, and that, once reunited with the applicant, the applicant's spouse will be promoted.
3. Copies of money transfers to the applicant between April 23, 2005 and December 1, 2005.

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

Prior to considering the applicant's claim to extreme hardship, the AAO turns to counsel's assertion that U.S. Citizenship and Immigration Services (USCIS) has deviated from previous decisions in denying the applicant's waiver application. In support of this claim, counsel submits copies of waiver application submissions for other clients. These materials are not, however, probative in this matter as waiver decisions are made on a case-by-case basis. Each applicant bears his or her own burden to establish eligibility, and decisions must be based on the evidence in each record. 8 C.F.R. 103.2(b). Further, counsel misapplies the notion of precedent, as the Secretary is allocated sole discretion to waive inadmissibility on the grounds of unlawful presence under section 212(a)(9)(B)(v) of the Act, and each adjudication will be based on the facts associated with that application. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999).

In the present case, counsel contends that the applicant's spouse is experiencing extreme hardship based on the impact that having to care for his daughter in the applicant's absence is having on his well-being and his career, as established by the letters submitted by the applicant's spouse and his employer. The applicant's husband states that he is having to care for their daughter in the applicant's absence, that his daughter is unable to reside with her mother in Mexico because she repeatedly fell ill with fever and diarrhea and had other medical problems when she lived in Mexico, that his separation from the applicant is severely damaging his career opportunities because he will not be promoted to a supervisory position until his wife's immigration status is resolved, and that his daughter's separation from her mother is causing her emotional distress.

While the AAO acknowledges that the applicant's husband is responsible for the care of their daughter, it does not find the record to demonstrate that his childcare responsibilities constitute an extreme hardship for him. The record contains no documentary evidence that his daughter is experiencing any medical problems that would affect his ability to care for her as a single parent. Further, neither counsel nor the applicant's spouse indicate that he is unable to afford childcare for his daughter or that childcare providers are unavailable to assist him in caring for her. While the AAO recognizes that the applicant's daughter is missing her mother, it notes that she is not a qualifying relative for the purposes of this proceeding and that the record fails to document, e.g., an evaluation from a licensed healthcare professional, how her emotional reaction to her separation from her mother affects her father, the only qualifying relative.

The applicant's spouse's claim that his separation from the applicant has resulted in the delay of his promotion to a supervisory position is supported by the letter from his employer, dated December 8, 2005. In his letter, the applicant's spouse's employer indicates that he is "confident that if [the applicant's spouse] is reunited with his wife he will be able to be promoted into to a production

supervisor position.” While the AAO acknowledges the disappointment felt by the applicant’s spouse over this delay in his career, it does not find the delay to constitute an extreme hardship. The record does not indicate that the postponement of this promotion in any way jeopardizes the applicant’s spouse’s standing with his company or precludes him from future advancement. Instead, the AAO finds the letter from the applicant’s spouse’s employer to indicate that he is held in high regard for his dedication to his current job.

The AAO notes that the record contains copies of money transfers sent to the applicant in Mexico by her spouse, ranging in amount from \$200 to \$500. However, neither counsel nor the applicant’s spouse contend that the applicant’s presence in Mexico is creating a financial hardship and the record fails to provide sufficient documentation to demonstrate the financial situation of the applicant’s spouse. Moreover, the AAO notes that the record does not include documentary evidence to demonstrate that the applicant is unable to obtain employment in Mexico and, thereby, alleviate any financial burden imposed on her spouse.

Extreme hardship to a qualifying relative must be established whether he or she relocates with 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 applicant’s spouse asserts that having to relocate to Mexico to reside with his wife would damage his career as he would have to leave a job where he has worked for eight years. He also states that he could not support his family if he were to move to Mexico. However, the inability of the applicant’s spouse to pursue a chosen profession does not constitute extreme hardship (*Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996)) and the record does not contain documentary evidence, e.g. published country conditions on the Mexican economy, that demonstrate he would be unable to obtain employment sufficient to support his family outside the United States. 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 also acknowledges that the applicant’s spouse has stated his family resides in the United States, but notes that the record fails to indicate whether separation from his family in the United States would result in emotional hardship for the applicant’s spouse if he were to reside in Mexico. Therefore the applicant has failed to establish that her spouse will suffer extreme hardship if he joins her in 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 spouse would face extreme hardship if she is refused admission. While the AAO recognizes that the applicant’s spouse will suffer hardships as a result of the applicant’s inadmissibility, the record does not distinguish these hardships from those normally associated with removal and separation. Accordingly, they do 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 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.