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U.S. Citizenship and Immigration Service
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: **APR 14 2009**
CDJ2004 725 130 (RELATES)

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:
[REDACTED]

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 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 10 years of his last departure from the United States. The applicant is married to 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.

The OIC found that the applicant failed to establish that his qualifying relative would suffer extreme hardship as a result of his inadmissibility to the United States. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated June 5, 2006.

On appeal, counsel states that the OIC failed to properly determine the burden of proof in establishing extreme hardship. She states that the OIC elevated the burden to exceptional and extremely unusual hardship, which was in error. Counsel states that the proper standard of hardship is the standard state in *Salcido-Salcido v. INS*, 138 F. 3d 1292 (9th Cir. 1998). *Form I-290B*, dated June 30, 2006.

In the present application, the record indicates that the applicant entered the United States without inspection in July 1997. The applicant remained in the United States until June 22, 2005. Therefore, the applicant accrued unlawful presence from when he entered the United States in July 1997 until June 22, 2005, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his June 2005 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.

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 and/or parent of the applicant. Hardship the applicant experiences or his children experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

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 Ninth Circuit Court of Appeals has held 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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). In *Salcido*, the court remanded to the Board of Immigration Appeals (BIA) for failure to consider the factor of separation despite respondent's testimony that if she were deported her U.S. citizen children would remain in the United States in the care of her mother and spouse. *See also Babai v. INS*, 985 F.2d 252 (6th Cir. 1993) (failure to consider hardship to U.S. citizen child if he remained in the United States is reversible error). 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

Counsel states that the applicant and his spouse have two children, ages one and three and that the applicant's spouse is currently employed as a receptionist at the Newport Health Medical Group. *Counsel's Brief*, dated January 24, 2007. Counsel states that the applicant's spouse is emotionally, financially and psychologically dependent on the applicant. She states that the applicant's spouse earns \$30,000 per year and that the applicant contributed a significant portion to the family's income. She states that now the applicant's spouse is suffering greatly to meet her financial obligations, she was almost evicted for not paying her rent and was forced to discontinue health insurance for her children because of high premiums. Counsel states that the applicant's spouse is clinically depressed and is experiencing diminished interest in almost all activities including work, both of her parents are infirm and she provides care for them, and she is suffering on behalf of her children who are deprived of their father on a daily basis. Counsel states that this separation is causing extreme anxiety for the entire family. *Id.*

The record includes a statement from [REDACTED]. Mr. [REDACTED] states that the applicant's spouse reports being very close to her parents and to her sisters who all live in Huntington Beach. *Letter from [REDACTED]*, dated August 3, 2006. The applicant's spouse reported to [REDACTED] that while in the United States the applicant was doing general construction work enabling his family to live quite well. [REDACTED] states that although part of the applicant's family lives in Guanajuato, Mexico, the applicant is living in Tijuana so that he can see his children. [REDACTED] diagnoses the applicant with Major Depressive Disorder Recurrent and states that she experiences a depressed mood most of the day, nearly everyday. He states that she cannot envision moving to Mexico, giving up her family and friends, subjecting her children to Mexican schools and giving up her job where she has seniority. [REDACTED] also states that the applicant's spouse's father suffers from diabetes and hypertension, that her mother is disabled, has a colostomy and had a breast removed, and that she lives the closest to her parents and takes care of their needs. He concludes that it is extreme hardship for the applicant's spouse to be deprived of her husband. *Id.* The AAO notes that although the input of any mental health professional is respected and valuable, the submitted letter does not indicate the nature of [REDACTED] interview with the applicant's spouse and fails to reflect an ongoing relationship with the applicant's spouse or any history of treatment for the depression she is suffering. Moreover, the conclusions reached in the submitted report, being based on what seems to be one self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional thereby rendering [REDACTED] findings speculative and diminishing the report's value in determining extreme hardship.

The record also contains two previously submitted statements from the applicant's spouse. The initial statement states that the applicant's spouse was born in Tijuana, Mexico and she came to the United States when she was two years old. *Spouse's Statement*, dated June 20, 2005. She states that her parents are both U.S. citizens and live nearby in Huntington Beach. She states that she has four sisters, three who are U.S. citizens and one who is a lawful permanent resident and that they all live relatively close, with one living in Huntington Beach. The applicant's spouse also states that she has five children, ages fifteen, twelve, eleven,

ten and two. *Id.* The AAO notes that this statement contradicts previous statements that she is the only relative living close to her parents and that she has two children, ages one and three.

The AAO notes that the record contains no documentation regarding the country conditions in Mexico, no medical documentation to substantiate the claims made about the applicant's spouse's parents, and no statements from the applicant's spouse's family as to the need for the applicant's spouse to care for her parents. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, the AAO finds that the current record does not establish that the applicant's spouse would suffer extreme hardship as a result of his inadmissibility.

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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

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(a)(9)(B) 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.