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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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MAR 03 2009

FILE:

[REDACTED]
(CDJ 2004 711 147)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 ten years of her last departure from the United States. The record documents that the applicant is married to a U.S. citizen and has two U.S. citizen children from the marriage. She seeks a waiver of inadmissibility in order to reside in the United States with her family.

The district director found that, based on the evidence in the record, the applicant had failed to establish that a qualifying relative would undergo extreme hardship as a result of her continued inadmissibility. The Form I-601 Application for Waiver of Grounds of Excludability was denied accordingly. *Decision of the District Director*, dated April 10, 2006.

On appeal, counsel contends that the district director erred in denying the applicant's Form I-601 because the refusal of the applicant's admission would result in extreme hardship to her naturalized U.S. citizen husband. Counsel also asserts that U.S. Citizenship and Immigration Services (USCIS) abused its discretion when it failed to recognize that the applicant has demonstrated that her qualifying relative is suffering and will continue to suffer extreme hardship in her absence. *Counsel's Brief on Appeal*, undated.

In the present matter, the record indicates that the applicant entered the United States without inspection in May 1991. The applicant remained in the United States until June 12, 2005. Therefore, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until June 12, 2005, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her June 12, 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 her children experience due to her inadmissibility is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse.

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). 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 whether he resides in the United States or Mexico, as he is not required to reside outside 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 contends that the applicant's spouse is experiencing and will continue to experience extreme emotional hardship as a result of his separation from the applicant. Counsel states that the applicant's spouse's separation from the applicant and their daughter, and having to care for his son alone, has resulted in extreme emotional and financial hardship to the applicant's spouse. Counsel also states that this is the first and only marriage for both the applicant and her spouse; and that they had been living in the United States together and raising a family for 11 years. He further notes that, in the applicant's absence, the applicant's spouse has had a great deal of difficulty coping, creating numerous difficulties at his job and that their son suffers from chronic asthma causing him to have coughing stints that leave him weak and unable to walk, requiring unpredictable doctor's visits.

The applicant's spouse states in his affidavit, dated December 14, 2005, that he has had to rearrange his work schedule so that he is be able to drop off and pick up his son from school and give him attention at the same time and that his employer has warned him that if he cannot fix his problems his pay will be cut, hurting his budget. He states that he and his son have suffered a lot because of the separation from his wife; that his son cries himself to sleep every night; that he does not know how to cook so they eat out every day; and that he is dying to see both his wife and daughter again but, due to his job, is unable to spend the holiday with them. In a second statement, dated May 17, 2006, the applicant's spouse states that his son is the one who suffers the most from the applicant's absence; that when he calls his wife, his son always asks when she is coming back; and that when his son gets sick, he has difficulty taking his son to the doctor because of his job. The applicant's spouse states that sometimes he worries about his job because his employer may move him to a different position with a lower salary and that this change would result financial difficulties as he sends money to his wife in Mexico, as well as pays a mortgage, bills, the babysitter and taxes.

The AAO notes counsel's and the applicant's spouse's claims that he is suffering and will continue to suffer economic and emotional hardship as a result of his family's separation. Letters from the applicant's spouse's employer, dated December 8, 2005, May 10, 2006 and May 12, 2006, confirm that the applicant's spouse has changed his work schedule to care for his son and that his reduced hours at work may require a change in position that could affect his pay. The supervisor of the applicant's spouse indicates that the applicant's spouse has a lowered level of concentration at work, has lost a significant amount of weight and has had a drastic change in attitude, which has caused concern. While the AAO acknowledges the difficulties that the applicant's spouse will face in caring for his child in absence of his wife and his concerns regarding a reduced level of income, the record does not contain any documentary evidence showing the applicant's spouse's income or that it has been reduced, the family's expenses, or the amount of money the applicant's spouse sends to the applicant in Mexico. Therefore, the record fails to demonstrate that the applicant's spouse is unable to maintain his household and meet his expenses on his income. Simply 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)). Furthermore, in *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994), the Board of Immigration Appeals held that economic detriment in the absence of other substantial equities is not extreme hardship (citing *Matter of Sangster*, 11 I&N Dec. 309 (BIA 1965)); see also, e.g., *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986); *Bueno-Carrillo v. Landon*, 682 F.2d 143 (7th Cir. 1982); *Carnalla-Munoz v. United States INS*, 627 F.2d

1004 (9th Cir. 1980). Even a significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS*, supra; *Santana-Figueroa v. INS*, 644 F.2d 1354 (9th Cir. 1981).

While the AAO acknowledges the observations of the applicant's spouse's supervisor regarding the applicant's spouse's reduced concentration at work, his loss of weight and change in personality, it does not find these statements sufficient to establish that the emotional impacts of separation on the applicant's spouse are beyond those normally experienced by individuals separated as a result of one spouse's inadmissibility. The record does not contain an evaluation of the applicant's spouse's mental or emotional status prepared by a licensed health care professional.

The applicant's spouse claims that his U.S. citizen son is suffering and will continue to suffer extreme emotional and physical hardships if he remains in the United States without his mother. The applicant's spouse states that his son is missing the applicant and is struggling in school. He also asserts that his job makes it difficult for him to take his son, who suffers from chronic asthma, to a doctor when his son is sick. While the AAO notes that a letter from [REDACTED] establishes that the applicant's son suffers from asthma, the letter does not indicate the extent to which the applicant's son requires medical treatment for his asthma, including visits to the doctor. It also notes that the letter does not support counsel's assertion that the applicant's son's asthma results in coughing stints that leave him weak and unable to walk. Moreover, as previously indicated, the applicant's son is not a qualifying relative in this proceeding and the record fails to demonstrate how the hardship experienced by the applicant's son is affecting his father.

The AAO is mindful of and sensitive to the applicant's spouse's concerns about maintaining his family and the hardship he will endure if the applicant's waiver application is denied. However, the record fails to offer evidence that distinguishes the applicant's spouse's situation, if he remains in the United States, from that of other individuals separated as a result of removal. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See, e.g. Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)(upholding the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996)(holding that the common results of deportation are insufficient to prove extreme hardship and defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); and *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980)(severance of ties does not constitute extreme hardship). Having carefully considered the record, the AAO concludes that the applicant in this case has failed to establish extreme hardship to her spouse in the event that he remains in the United States following the denial of her waiver application.

In his December 14, 2005 affidavit, the applicant's spouse asserts that he cannot move to Mexico because everything he has is in the United States and he will not be able to work or find a job since he is a U.S. citizen. He also contends that Mexico does not have many jobs. Although the applicant's spouse's claims are noted, the AAO observes that the record does not include any supporting documentation, e.g., published country conditions reports, to establish it would not be possible for him to obtain a job and earn sufficient income to support his family if he relocated to

Mexico with the applicant. Simply 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 applicant's spouse also states that he wants both his children to get a good education in the United States because they would have better opportunities in the United States. However, the fact that educational opportunities for children may be better in the United States than in the applicant's homeland does not establish extreme hardship. *Matter of Kim*, supra; see also *Ramirez-Durazo v. INS*, supra (stating that the disadvantage of reduced educational opportunities is insufficient to constitute extreme hardship). Moreover, as just noted, the applicant's children are not qualifying relatives in this proceeding and thus the hardships they may experience as a result of the applicant's inadmissibility are not considered unless they create hardship to the applicant's spouse. Accordingly, the AAO does not find sufficient evidence in the record to establish that the applicant's spouse would suffer extreme hardship if he relocated to Mexico with the applicant.

In the final analysis, the AAO finds that the applicant has failed to establish that her spouse would experience hardships over and above the normal economic and social disruptions created by removal so as to warrant a finding of extreme hardship. As the applicant is statutorily ineligible for relief under 212(a)(9)(B) of the Act, no purpose would be served in discussing whether the applicant 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.