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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

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: CHICAGO, ILLINOIS Date: MAY 07 2009

IN RE: [redacted]

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

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, Chicago, Illinois. 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. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days. He is married to a Lawful Permanent Resident (LPR) and has two U.S. citizen children. He 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 his admission would impose extreme hardship on a qualifying relative, his LPR spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601).

On appeal, counsel for the applicant states that the applicant is the sole source of income for his family, and that it would be an extreme hardship for his spouse if he were to be excluded while his family remained in the United States or if they were to relocate with him to Mexico.

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-
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> . . . .
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> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal . . . is inadmissible.
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> . . . .
>
> (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.

During his adjustment interview with U.S. Citizenship and Immigration Services (USCIS), the applicant stated that he had entered the United States in or around January 1996 without inspection and remained until his departure in December 1997. Therefore, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed in December 1997, a period of over 180 days. The applicant re-entered the United States in January 1998 without inspection and has not departed. Therefore, he is inadmissible under section 212(a)(9)(B)(i)(I) of the Act for having been unlawfully present in the United States for a period of more than 180 days but less than one year. The applicant does not contest his inadmissibility.

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 or his U.S. citizen children is not directly relevant in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to the qualifying relative, his LPR spouse.[1] If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not

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[1] The AAO notes that the record contains a statement from the applicant's father in which he claims to be a Lawful Permanent Resident, but that the record does not provide documentation of his status. As such, he cannot be considered a qualifying relative for the purpose of this proceeding.

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). As this case arises within the jurisdiction of the 9th Circuit Court of Appeals, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she accompanies the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record includes, but is not limited to, counsel's brief; statements from the applicant as well as the applicant's spouse; statements from family and friends, tax documentation for the years 2002- 2005, letters verifying the applicant's employment, and copies of titles for the applicants vehicles and property.

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

The applicant has stated that he has no family ties in Mexico, as all of his immediate family has moved to the United States, and the applicant's spouse asserts that their extended family is in the United States. Statements from the applicant's father attest to the fact that the applicant's mother has passed away, that he resides in the same community as the applicant, that the applicant's brothers and sisters all reside in the United States. He further states that he relies on the applicant for his trips to the doctor and other day to day needs. The applicant's spouse's Form G-325A, Biographical Information, indicates that her parents reside in Stockton, California, but the record is not clear as to the location of other members of her family.

Counsel has asserted that the applicant is the sole source of income for his spouse and children, and submits copies of the applicant's tax returns and employment letters as evidence. While the record establishes that the applicant provides financially for his family in the United States, it does not contain any documentary evidence that the applicant would be unable to work in Mexico and provide support for his family from outside the United States. In addition, the record does not provide any evidence that the applicant's spouse would be unable to obtain employment in order to provide financially for her family.

Statements in the record assert that the applicant's father depends on him for trips to the doctor and pharmacy to pick up his medications, as well as to provide for his other day to day needs. While the AAO sympathizes with the adjustments that the applicant's family will have to make, the record, as noted above, does not establish the applicant's father as a qualifying relative. As such, any impact on him is not directly related to a determination of extreme hardship except as it would affect the only qualifying relative, the applicant's LPR spouse. The record does not, however, establish that the hardship experienced by the applicant's father would have an impact on the applicant's spouse.

Based on the record before it, the AAO does not find the applicant to have established that the hardships experienced by his spouse would rise above those normally experienced by the relatives of excluded aliens. As such the applicant has not established extreme hardship to his spouse if he were excluded from the United States and she were to remain.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. In this case, counsel contends that the applicant's wife and children would suffer extreme hardship in Mexico because they would be deprived of all familial support. Counsel further contends that the applicant's children have spent their entire lives in the United States and that to uproot them and take them to a foreign environment would have a negative impact on their social development. The applicant states that his family would experience a greatly lowered standard of living in Mexico as his ability to earn a living would decrease. He also asserts that the family's relocation to Mexico would rob his children of educational opportunities. While the AAO notes the claims made by counsel and the applicant regarding the impact of relocation on the applicant's children, it observes that, as previously discussed, the applicant's children are not qualifying relatives in this proceeding and the record does not demonstrate how the hardships they might experience upon relocation would affect their mother, the only qualifying relative. Moreover, although the applicant contends that his ability to earn a living in Mexico would decrease, the record contains no documentary evidence to support this claim. Therefore, the record does not establish that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico with the applicant.

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 husband faces extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's spouse will have to make adjustments. These assertions, however, are common hardships associated with removal and separation, and 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 his 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 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 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.