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

PUBLIC COPY

[redacted]

H4

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date: NOV 19 2007

CDJ 2004 507 068 (RELATES)

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. § 1182(a)(9)(B)(v).

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the United States Citizenship and Immigration Services (USCIS) Officer-in-Charge (OIC), Ciudad Juarez, Mexico and 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 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. 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), in order to reside in the United States with his U.S. citizen spouse.

The record reflects that the applicant entered the United States without inspection in 1999 and remained in the United States until departing voluntarily in February 2003. The applicant and his spouse, a native of the United States, were married on May 17, 2002 in the United States. The applicant filed a Petition for Alien Relative (I-130) naming the applicant as beneficiary on June 28, 2002. The petition was approved on December 30, 2003. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 4, 2005.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of OIC*, dated November 18, 2002.

On appeal, the applicant's spouse submits additional evidence and requests that the decision to deny the waiver application be reconsidered.

The record contains a statement from the applicant's spouse; a letter from [redacted] physician to the applicant's spouse; a letter from the applicant's spouse's friend [redacted] a letter from her daughter [redacted] and medical records for the applicant's mother-in-law. The entire record has been considered in rendering a decision on the appeal.

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 . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure of removal, or

> (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.
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> . . . .
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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.

The record reflects that the applicant entered the United States without inspection in 1999 and remained in the United States until departing voluntarily in February 2003. He is now seeking admission. Therefore, the applicant accrued unlawful presence from 1999 through February 2003, a period in excess of one year.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act 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 the aforementioned friends is not relevant 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 wife 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-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 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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

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 or 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.

In her statement, the applicant's spouse indicates that she has high blood pressure "which at this time is uncontrollable [due] to a lot of worrying about my husband and how to pay all of the bills." She also states that she can't afford surgeries recommended to address her obesity without her husband in the United States to provide financial and emotional support. She asserts that travel to Mexico is difficult because it requires her to take antibiotics to counteract the effect of mosquito bites. She also indicates that she has suffered food poisoning in Mexico because her husband's family does not have a refrigerator.

In his letter [redacted] states that the applicant's spouse "has been under severe emotional distress since her husband's deportation to Mexico." He indicates that the applicant's spouse is "morbidly obese" which results in fluctuating blood pressure requiring medication. He asserts that the applicant is functioning at a "suboptimal level" because she is "personally distraught" and that she sometimes suffers "stress incontinence which causes acute embarrassment in public."

The record, reviewed in its entirety and in light of the [redacted] factors, cited above, does not support a finding that the applicant's wife faces extreme hardship if he is refused admission.

The AAO recognizes that the applicant's wife suffers emotionally as a result of her separation from the applicant. However, the applicant has not submitted evidence showing that her situation is atypical of individuals separated as a result of removal or inadmissibility and rises to the level of extreme hardship based on the record. 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. There is insufficient evidence showing that the applicant's spouse's obesity and accompanying high blood pressure are the result of her separation from the applicant, or how his presence would alleviate these conditions. The applicant's spouse has asserted that the applicant's presence would allow her to undergo certain recommended surgical procedures, but she has submitted no evidence showing that surgical procedures have been recommended by a medical professional

or the impact these operations would have on her ability to function normally. Likewise, the applicant has failed to submit any evidence beyond asserting that she worries about how to pay her bills to show that she is suffering financial hardship in the applicant's absence. While the assertions of the applicant's spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of specific supporting evidence. *See Matter of Kwan,* 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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 has also failed to submit sufficient evidence showing that his spouse would suffer extreme hardship if she relocated to Mexico. The applicant's spouse's assertions that she had to take medication to deal with illness caused by mosquito bites, and that she once suffered food poisoning, in Mexico are insufficient to demonstrate that she would experience extreme hardship there.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under sections 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.