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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

H6

FILE: [redacted] (CDJ 2004 807 047) Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: APR 06 2010

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).

Perry Rhew
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. He 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 his last departure. He is married to a U.S. citizen. 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 U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 14, 2006.

On appeal, counsel for the applicant states that the District Director's decision was in error, and that the applicant's spouse will experience extreme hardship due to the applicant's exclusion.

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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> (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 indicates that the applicant entered the United States without inspection in December 1997 and remained until he departed voluntarily in April 2005. Therefore, the applicant accrued unlawful presence from April 30, 1998, the date of his 18th birthday, until he departed the United States in April 2005. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is

inadmissible 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 in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. S*ee Matter of Mendez,* 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 accompanies 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 includes, but is not limited to, statements from the applicant's spouse; medical records for the applicant's spouse; a copy of a medical prescription for the applicant's spouse; and educational records and letters of commendation for the applicant's spouse.

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

The applicant's spouse asserts that she needs the applicant in the United States to support her physically, emotionally and financially. She states that she suffered a head injury when she was a child, that she currently has recurring headaches related to that injury and has seen a neurologist who

has prescribed medication. The applicant's wife states that she needs the applicant's support in dealing with her headaches. She also states that the applicant has always been the head of their household and has taken care of their bills, car maintenance, house repairs and maintenance. The applicant's wife asserts that she wishes to pursue an advanced degree but will be unable to do so in the applicant's absence since she will have to work full-time. She also asserts that she and her husband have been having problems conceiving a child during her visits to Mexico.

The record includes medical documentation indicating the applicant's spouse sustained a serious head injury in 1984 when she was five years old. The record also contains a copy of a prescription for the medication Topamax, which is prescribed for migraine headaches. Although the AAO's notes the applicant's spouse's assertions regarding her health, it does not find the record to contain medical documentation, e.g., a statement from the applicant's spouse's physician, that establishes the frequency or severity of the applicant's spouse's headaches, what impact, if any, they have on her ability to function or that she requires any type of assistance as a result. As such, the record does not contain sufficient evidence to establish that the applicant's spouse has a medical condition that will result in significant hardship for her in the applicant's absence.

The record contains educational documentation indicating that the applicant's wife has completed a baccalaureate degree. However, there is no documentation that corroborates her assertion that she will be unable to continue her education without the applicant's financial support. In addition, the record does not contain any documentary evidence that the applicant and his spouse have any medical problems that require they both reside in the United States in order to conceive a child. As such, the record does not contain sufficient evidence to establish that the applicant's spouse will be unable to attain her educational goals in the applicant's absence. Neither does it demonstrate through any medical reports or statements that the applicant's inadmissibility will prevent her from having children. Based on the record before it, the AAO finds insufficient evidence to establish that the applicant's wife will experience extreme hardship if his waiver request is denied and she remains in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. The applicant's spouse asserts that she does not have many relatives in Mexico, has no job contacts there, and that she is accustomed to medical care in the United States. While the AAO recognizes that relocating to Mexico with the applicant will result in disruptions and difficulties for his wife, the record fails to provide evidence that she will experience impacts rising to the level of extreme hardship in doing so. The applicant has submitted no documentation establishing that his spouse will be unable to obtain employment in Mexico or that she will be unable to receive adequate health care. Accordingly, the applicant has failed to demonstrate that his wife will suffer extreme hardship if she joins him 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 wife will face extreme hardship if he is refused admission. The AAO recognizes that the applicant's spouse will experience hardship as a result of the applicant's inadmissibility. The record, however, fails to distinguish her hardship from that commonly associated with removal and exclusion and it does not, therefore, 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 U.S. citizen wife 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.