U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

#6

FILE: [redacted] Office: MEXICO CITY [redacted] Date: JAN 08 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, 8 U.S.C. §§ 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Hunnway

for 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, [redacted] is a native and citizen of Mexico. She 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 admission within 10 years of her last departure from the United States. The applicant 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 return to the United States to join her U.S. citizen spouse.

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the applicant's spouse is suffering extreme hardship as a result of his separation from the applicant.

In support of the application, the record contains, but is not limited to, a brief from counsel, a property tax assessment, a psychological evaluation of the applicant's spouse, and a psychological evaluation of the applicant's son. The entire record was reviewed and 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-
>
> . . . .
>
> (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 [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 shows that the applicant entered the United States without inspection in November 1997. The applicant remained in the United States until departing in June 2000. The applicant accrued unlawful presence from November 1997 until June 2000. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of her June 2000 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of her last departure.[1]

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 or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 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 (BIA) 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 United States 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).

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

[1] Almost ten years have passed since the applicant's June 2000 departure from the United States. As of June 2010, the applicant will no longer be inadmissible based on her prior unlawful presence because the ten-year period for which she was barred from admission will have passed.

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.

Counsel states that the applicant and her spouse have a son, [redacted] who was born in the United States in 1998. Counsel states that the applicant entered the United States without inspection in 1997 with her daughter, [redacted] Counsel states that in 2000, [redacted] who was then a young teenager, became involved with a 33-year-old drug dealer, [redacted] Counsel states that the applicant's daughter disappeared with [redacted] for a few days. Counsel states that after the applicant's daughter's return the family started receiving threatening phone calls and someone set the applicant's spouse's truck on fire. Counsel states that the family believes these incidents are linked to [redacted] and they filed police reports. Counsel states that because of these incidents, the applicant returned to Mexico with both her son and daughter.

As corroborating evidence, counsel filed an undated psychological evaluation of the applicant's spouse from [redacted] of Bilingual Behavioral Counseling Services in Las [redacted] The assessment relays the applicant's spouse's account of the issues involving [redacted] and [redacted] The evaluation contains a diagnosis of the applicant's spouse which states that he has major depression, high level of anxiety, attention difficulties, adjustment disorder with mixed emotional features, and emotional depravation. Ms. [redacted] notes in her evaluation, "While it is reasonable to expect that any separation from loved ones would cause emotional distress I feel that in [redacted] case there are multiple factors which deem [redacted] case 'extreme hardship' in particular that his family left the country because they were being victimized."

The AAO has reviewed the psychological evaluation of the applicant's spouse and finds that while it details his family history, it is based on a single interview. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the mental health conditions suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The AAO recognizes that the applicant's spouse is suffering emotionally as a result of his separation from the applicant and children. The AAO also acknowledges that their separation is particularly difficult as it was initially triggered by the applicant's attempt to find a safe haven for her daughter. Their situation now, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in

---

[2] The record contains a copy of the Form I-130, Petition for Alien Relative, filed on behalf of the applicant by her spouse. The Form I-130 reflects that the applicant's daughter, [redacted] was born on May 18, 1984 in Mexico.

every case where a qualifying relationship exists. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

Ms. [redacted] notes in her psychological evaluation that after the applicant was denied her immigrant visa due to her inadmissibility, "Angel said that he felt that his entire life had turned upside down and that upon his return from Mexico he was forced to look for another job in order to survive. He stated that he had to take on not only the previous responsibilities but had to provide for and maintain a household in Mexico as well."

The AAO finds that the applicant's spouse's assertion regarding the economic strain of his separation from the applicant is not supported by the record. There is no documentation in the record related to the applicant's spouse's employment and income. Further, the record does not contain documentation of his monthly mortgage payments and other recurrent expenses. Nor is there any evidence that he has been sending remittances to the applicant. The only expense related documentation in the record consists of a real estate property tax assessment. This document does not, alone, demonstrate the financial hardship the applicant's spouse claims he would suffer if he remains separated from the applicant. As such, the AAO does not have sufficient documentation to fully assess the applicant's spouse's financial situation. 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)). Although the applicant's spouse's unsupported assertions are relevant and have been considered, they are of little weight in the absence of supporting evidence.

Ms. [redacted] further notes in her evaluation that the applicant's spouse indicated that his son, Juan Carlos, who resides with the applicant in Mexico, was referred to a psychologist due to his learning difficulties. Ms. [redacted] states, "Unfortunately, the school [redacted] is currently attending does not provide assistance to children who have special educational needs and Angel is financially unable to enroll him in a private school that accommodates [redacted] needs. This dilemma is causing Angel a great deal of anxiety as he is currently powerless in aiding his son."

The record contains a psychological evaluation of the applicant's son written in Spanish. The English translation of the evaluation reflects that it was issued by [redacted] psychologist, with the Community Center San Jose, on July 3, 2007. The evaluation states that:

> This is to confirm that [redacted] presented with a state of severe depression due to lack of his father figure. As a result of this symptom, he

> attended services of therapy sessions in which he had six session[s] and he has not gotten better; therefore it is important that he reunites with his father in the shortest time possible. This will be able to improve his emotional and familial condition.

The AAO notes that hardship to [redacted] will be considered only insofar as it results in hardship to the applicant's spouse. The evaluation from Ms. [redacted] indicates that [redacted] has learning disabilities that require special needs education. Ms. [redacted] cites to a psychological evaluation of Juan Carlos. However, Ms. [redacted] psychological evaluation of [redacted] states that he has severe depression due to his lack of a father figure. There is no evidence that [redacted] has been diagnosed with a learning disability. Nor is there any evidence related to his six therapy sessions and the assessment of his depression. Further, it is unclear from these evaluations whether [redacted] has learning disabilities that impair his ability to learn in a standard school environment or if he has learning difficulties as a result of his emotional distress due to his separation from his father. Moreover, the evaluations do not address whether the applicant's spouse has considered having [redacted] who is a U.S. citizen, accompany him in the United States. Presumably, relocating [redacted] to the United States would allow him to reunite with his father and provide him the opportunity to be assessed within the U.S. public school system for learning disabilities.

Finally, counsel asserts that the applicant's spouse is 48 years old and at this point it is not possible for him to start a new life in Mexico and be able to earn sufficient money to support the family. Counsel states that the family owns property in the United States which the applicant's spouse will lose if he relocates to Mexico.

The AAO recognizes that the applicant's spouse's relocation to Mexico may be economically detrimental to him. However, a reduction in standard of living does not necessarily result in extreme hardship. U.S. courts have held that demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) ("the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.").

Furthermore, the applicant's spouse is a native of Mexico; therefore, he should not face significant hardships in readjusting to residence in the country. He is presumably fluent in Spanish and is familiar with the country's culture and customs. Moreover, there is nothing in the record to show that he would not be able to find employment and earn a living wage in Mexico. Accordingly, the AAO cannot conclude that the applicant's spouse would suffer extreme hardship if he relocated to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, 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 has failed to establish eligibility for a waiver of inadmissibility 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 she 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 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.