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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE: [Redacted] Office: CIUDAD JUAREZ, MEXICO  
CDJ 2004 677 159 (relates)

Date: **MAR 09 2010**

IN RE: Applicant: [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: 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.

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the 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 appears to be represented by counsel. However as the record does not contain a Notice of Entry of Appearance as Attorney or Representative (Form G-28), the AAO will consider the applicant to be self-represented. All representations will be considered but the decision will be furnished only to the applicant.

The record reflects that 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 his last departure from the United States.<sup>1</sup> The record indicates that the applicant is married to a United States citizen and the father of a United States citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 reside in the United States with his United States citizen wife and child.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated April 17, 2007.

On appeal, the applicant claims that his wife is suffering emotional and financial hardship. *See appeal brief*, page 7, filed June 27, 2007.

The record includes, but is not limited to, the applicant's appeal brief, an affidavit from the applicant's wife, medical records for the applicant's mother-in-law, and a country conditions report on Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

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<sup>1</sup> The OIC also found that the applicant had been determined to be medically inadmissible to the United States pursuant to section 212(a)(1)(iii) of the Act. However, as noted in the OIC's decision, the applicant has satisfied the waiver requirements of section 212(g) of the Act and is no longer inadmissible to the United States for medical reasons.

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.

In the present application, the record indicates that the applicant entered the United States in January 2000 without inspection. On April 18, 2003, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On June 9, 2004, the applicant's Form I-130 was approved. In April 2006, the applicant voluntarily departed the United States. On April 18, 2006, the applicant filed a Form I-601. On April 17, 2007, the OIC denied the Form I-601, finding that the applicant had accrued more than a year of unlawful presence and had failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant accrued unlawful presence from January 2000, when he entered the United States without inspection, until April 2006, when he departed the United States. The applicant is seeking admission into the United States within ten years of his April 2006 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. The AAO also notes that the record contains references to the hardship that the applicant's child would suffer if the applicant were denied admission into the United States.<sup>2</sup> Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's child is not considered in section 212(a)(9)(B) waiver proceedings except to the extent that it creates hardship for a qualifying relative. Moreover, in the present case, the record does not establish, through documentary evidence, that the applicant has children. 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).

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<sup>2</sup> The AAO notes that in the applicant's wife affidavit she stated she was pregnant with their second child. However, there is no documentation in the record that the applicant's wife has had another child.

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 *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 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. The BIA has also held:

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.

The AAO notes, however, that the courts 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). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also 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). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

The applicant states that because of his wife’s long residence in the United States, she would suffer extreme hardship if he were removed to Mexico. *See appeal brief, supra* at 6. The AAO acknowledges that the applicant’s wife is a native and citizen of the United States and that she may experience hardship

in relocating to Mexico. However, the AAO notes that the applicant's wife submitted a letter for the record that is written in Spanish, and it has not been established that she does not speak Spanish nor that has no family ties in Mexico.

The applicant's wife states "[g]iven [her] current family responsibilities and [her] bout with depression, it would not only be difficult but also impossible for [her] to relocate to Mexico." The applicant also states that his wife cannot "relocate to Mexico since she has the sole responsibility for caring for her mother." *Id.* at 7. In an undated affidavit, the applicant's wife states that since the applicant departed the United States, it has been difficult to care for her child and mother at the same time.

The AAO notes that the record includes medical notes that indicate the applicant's wife's mother is suffering from various medical conditions, including hypertension and depression. However, there is nothing from a doctor indicating the severity of these conditions or how they affect her ability to function. Additionally, there is no documentary evidence that establishes that the applicant's wife is her mother's caregiver or that she is the only person available to care for her mother. Although the applicant's wife states that neither her father nor her siblings are able to assist her mother, the record does not document that they are unable or unwilling to serve as caregivers. The record also fails to document how the relocation of the applicant's spouse would affect her mother and, in turn, how her mother's reaction to her departure would affect the applicant's spouse, the only qualifying relative in this matter. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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 states his wife is emotionally dependent on him. The applicant's wife states that she has attended psychological counseling, where she was diagnosed with depression and that she is currently under the care of a psychiatrist. The AAO notes that other than statements from the applicant and his wife, there is no documentary proof that the applicant's wife is under a psychiatrist's care. The record also offers no evaluations of the applicant's wife's mental health for the AAO to review to determine how the separation from the applicant is affecting her mentally/emotionally. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.* Additionally, the record fails to demonstrate that the applicant's wife has any medical condition, physical or mental, that would affect her ability to relocate.

The applicant states that the employment prospects for him and his wife in Mexico are not comparable to what is available here in the United States. The record, however, does not support this claim. The record includes a copy of the section on Mexico from the Department of State's Country Reports on Human Rights Practices – 2006, which indicates that the minimum wage in Mexico does not provide a decent standard of living for a worker and his or her family. However, nothing in the record establishes that the applicant's spouse would be limited to minimum wage employment. Additionally, no other country conditions material is submitted to establish that the applicant's wife would be unable to obtain employment if she joined the applicant in Mexico. Furthermore, the AAO notes that the applicant's wife was previously employed in the United States, and no evidence has been submitted to establish that

she has no transferable skills that would aid her in obtaining a job in Mexico. The AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she joined him in Mexico.

In addition, the applicant does not establish extreme hardship to his wife if she remains in the United States. As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's wife states that as a result of the stress created by her separation from the applicant, she has had to undergo psychological counseling and has been diagnosed with depression. She also asserts that without the applicant, it has been exceptionally difficult to care for her child and her mother at the same time. The AAO acknowledges the applicant's wife's claims, but, as previously discussed, the record fails to offer documentary evidence to support them. The record does not contain any medical evidence that demonstrates that the applicant's wife has been diagnosed with depression or is receiving treatment. Neither does it include documentation that establishes the applicant's wife as the sole caregiver for her mother or that her mother requires care. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.* Accordingly, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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) 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.