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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

HL

FILE: [REDACTED]  
(CDJ 2004 843 228)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date: **MAR 10 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:

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, 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 United States 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 April 17, 2007.

On appeal, the applicant's spouse states that she is suffering emotionally due to the applicant's exclusion and asks that United States Citizenship and Immigration Services (USCIS) forgive her husband for his DWI convictions.

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 establishes that the applicant entered the United States without inspection in 1985, departing briefly in 1995 before again entering without inspection. He remained in the United States until he departed voluntarily in March 2006. Therefore, the applicant was unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provisions under the Act until March 2006, and is now seeking admission within ten years of his last

departure. Accordingly, the applicant is inadmissible to the United States 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. 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 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 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; statements from friends of the applicant and his spouse and the applicant’s spouse’s sister-in-law attesting to the strength of their marriage; a copy of the applicant’s spouse’s naturalization certificate; a copy of a utility bill; employment verification for the applicant’s spouse; and photographs of the applicant and his spouse. The entire record was reviewed and all relevant evidence considered in rendering this decision.

The applicant’s spouse asserts that, while the applicant’s removal would have a financial impact on her, her real hardship is emotional. She states that she cannot live without the applicant and that she

cannot eat or sleep. She further states that she is losing her mind at the thought that he might not be able to return to the United States. While the AAO acknowledges the applicant's spouse's statements, it does not find the record to include any documentary evidence that would establish the emotional/psychological impact of the applicant's absence on his spouse. In the absence of such evidence, the applicant's spouse's statements are insufficient proof of her emotional hardship. 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 AAO also notes that the record fails to offer sufficient documentation of the applicant's spouse's expenses and income to establish her financial situation in the applicant's absence.

The applicant's spouse asserts on appeal that her mother has recently been diagnosed with cancer, and that she has assumed responsibility for her mother's care, as her siblings all have families of their own and she is the oldest. The AAO again notes the applicant's spouse's statements but finds the record to contain no documentary evidence that demonstrates that the applicant's spouse's mother is suffering from cancer or that she is her mother's primary caregiver. *Id.* It further finds no documentation that addresses how the applicant's spouse would be affected by her claimed responsibility for her mother's care in the applicant's absence. As such, the record contains insufficient evidence that the applicant's spouse would experience extreme hardship if the applicant is excluded 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. In this case, the applicant does not address how relocation to Mexico would affect his spouse. While the AAO would normally consider evidence of a qualifying relative's responsibility for a seriously ill family member in determining hardship upon relocation, the record, as just discussed, fails to document the applicant's spouse's claims in this regard. Accordingly, the AAO does not find the applicant to have established that his spouse would experience extreme hardship if she joined 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 spouse would face extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse will experience hardship based on the applicant's inadmissibility. The record, however, fails to distinguish her hardship from that normally 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 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.