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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

[redacted]

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FILE: [redacted] (CDJ 2004 745 161) Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: MAY 11 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 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 admission within ten years of her last departure from the United States. The applicant is married to a naturalized U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her family.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied on June 11, 2007.

On appeal, the applicant states her inadmissibility has created financial and emotional hardship for her family.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
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> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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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 (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or
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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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> . . . .
>
> (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 Attorney General [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 matter, the record indicates that the applicant entered the United States with a Border Crossing Card in 1991 and remained until an unknown date. The applicant re-entered the United States with a B-1 visa on September 24, 1997, and stayed beyond her authorized period of stay, which ended on October 23, 1997. At the time of her immigrant visa interview on November 15, 2005, the applicant indicated to the consular officer that she had voluntarily departed the United States in June 1998. The AAO notes, however, that, on May 5, 2000, the applicant attended her adjustment of status interview in San Francisco where she testified that she had last entered the United States on September 24, 1997. The only evidence of the applicant's return to Mexico found in the record is the consular memorandum documenting her November 15, 2005 interview in Ciudad Juarez.

Based on the applicant's testimony at the time of her adjustment interview, the information provided on her Form I-485, Application to Register Permanent Residence or Adjust Status, and that provided on her Form G-325A, Biographic Information, regarding her U.S. residence, the AAO finds that the applicant accrued unlawful presence from October 24, 1997, the day after her authorized nonimmigrant stay expired, until February 17, 1999, the day she filed the Form I-485.[1] The applicant's Form I-485 was denied on March 20, 2001. She, therefore, again accrued unlawful presence, beginning March 21, 2001, until her 2005 departure for Mexico. In that the applicant accrued more than one year of unlawful presence in the United States and is seeking admission to the United States within ten years of her departure, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act and must obtain a waiver under section 212(a)(9)(B)(v) of the Act.

Beyond the decision of the District Director, the AAO finds that the applicant is also inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having entered the United States through fraud or the willful misrepresentation of a material fact.[2] During

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[1] The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General (now Secretary) as an authorized period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. *See* Memo. from Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, to Field Leadership, *Consolidated Guidance Concerning Unlawful Presence for Purposes of Section 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(1)*, (May 6, 2009) (available at http://www.uscis.gov/files /nativedocuments/revision_redesign_AFM.PDF)(summarizing the rules applicable to calculating unlawful presence). As such, the applicant did not accrue unlawful presence during this time.

[2] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. *See Spencer Enterprises, Inc. v. United*

her adjustment interview in 2000, the applicant stated that at the time of her 1997 nonimmigrant admission to the United States she had been living in the United States since 1982 and was returning home to her husband and children. As the applicant used a nonimmigrant visa to enter the United States when she was returning to her permanent residence, she is inadmissible pursuant to section 212(a)(6)(C) of the and must obtain a waiver under § 212(i).

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) **In general.** Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant who is the spouse, 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 Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien . . . .

A waiver of inadmissibility under either section 212(a)(9)(B)(v) or section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case the United States citizen spouse of the applicant. 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.

States, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

> 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).

AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with 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 of proceeding contains the following relevant evidence: a statement from the applicant's spouse; an employment letter for the applicant's spouse; birth certificates for the applicant's daughters; and tax records. The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, the applicant asserts that her spouse and two children will experience financial and emotional hardship due to her exclusion. The record contains a statement from the applicant's spouse in which he asserts that he has to support two households and that, as a result, the family's quality of life is very poor. He also states that the applicant's inadmissibility has caused emotional hardship for him and his children.

While the AAO acknowledges the applicant's spouse's statement, the record does not contain documentary evidence to support his claims. 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)). Although the record contains a letter that establishes the applicant's spouse's employment, there is no documentation of his income from this employment, nor any proof of his monthly financial obligations, any accumulated debt or the support he provides the applicant. There is also no documentation that establishes the emotional impact of separation on the applicant's spouse or how the impact of his children's separation from their mother affects him, the only qualifying relative. As such, the record does not establish that the applicant's spouse will experience extreme hardship if she is excluded and he remains in the United States.

As noted above, the applicant must also establish that a qualifying relative will experience extreme hardship if he or she relocates with the applicant. The AAO notes that the applicant lives in Tijuana and the applicant's spouse's mother in Mexicali, both of which are situated along the United States-Mexico border in northern Baja California, an area identified by the Department of State in a March 14, 2010 travel warning as having experienced a spike in crime and violence. In that the Department of State has warned United States citizens against travel along Mexico's northern border, the AAO finds that the applicant's spouse would experience extreme hardship if he joined the applicant 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 his wife is refused admission and he remains in the United States. The AAO recognizes that the applicant's spouse will experience hardship as a result of the applicant's inadmissibility. The record, however, does not distinguish his 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 her United States 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 she merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he or she is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.