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U. S. Citizenship and Immigration Services
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U.S. Citizenship
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FILE:

CDJ 2004 758 715

Office: MEXICO CITY (CIUDAD JUAREZ)

Date: JUL 07 2009

IN RE:

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:

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).

John F. Grissom
Acting 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 United States citizen husband, [REDACTED].

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 (now referred to as Inadmissibility) accordingly.

On appeal, counsel asserts that the burden on the applicant's spouse would be extreme and unusual because he would not only face losing his wife, but he would be forced to care for his children alone. Counsel states that the applicant's children and spouse are U.S. citizens. Counsel contends that the applicant has two young children who are separated from the applicant. Counsel notes that the applicant's spouse works long hours and his children are suffering a great deal. Counsel asserts that the economic impact is great because of the cost of childcare. Counsel states that the loss of income the applicant could provide after her children grow will hurt the family. As corroborating evidence the applicant submits letters from her spouse and friends, her children's birth certificates, family photographs, two contracts to convey land, and a property tax assessment. The entire record was reviewed and considered in rendering this decision.¹

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

¹ The record contains a letter the applicant's spouse initially filed with the applicant's waiver application. This letter, dated December 16, 2005, is written in Spanish without an accompanying certified English translation. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

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.

In the present application, the record reflects that the applicant entered the United States from Mexico without inspection in July 2002. The applicant resided in the United States until she voluntarily departed to Mexico in October 2005. Consequently, the applicant accrued unlawful presence for a period of over three years prior to her departure from the United States. The applicant is seeking admission within ten years of her October 2005 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 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).

The record reflects that the applicant wed [REDACTED], a U.S. citizen, on March 21, 2003. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and her spouse have a four year old U.S. citizen child, [REDACTED], and a six year old U.S. citizen child, [REDACTED].

On appeal, counsel asserts that the burden on the applicant's spouse would be extreme and unusual because he would not only face losing his wife, but he would be forced to care for his children alone. Counsel states that the applicant's children and spouse are U.S. citizens. Counsel contends that the applicant has two young children who are separated from the applicant. Counsel notes that the applicant's spouse works long hours and his children are suffering a great deal. Counsel asserts that the economic impact is great because of the cost of childcare. Counsel states that the loss of income the applicant could provide after her children grow will hurt the family.

The AAO notes that counsel's assertions address the hardship that the applicant's children would suffer if the applicant were refused admission. Section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant's child. In the present case, the applicant's spouse is the only qualifying relative under the statute, and the only relatives for whom the hardship determination is permissible. Hardship to the applicant's children will only be considered insofar as it results in hardship to the applicant's spouse.

The applicant's spouse asserts in his letter, dated July 26, 2006, that his children are suffering because they miss their mother. He states that his 12 month old daughter needs her mother and his three year old son asks for his mother and cries at night. He indicates that his son is not eating well because he is saddened by the absence of his mother. He states that he works very long hours in construction in order to sustain two separate households. He notes that his mother is helping him look after his children because he does not feel comfortable with placing them in a daycare center. The applicant made similar assertions in the letter he initially filed with his waiver application, dated November 28, 2005. In that letter, he stated that both of his children were taken care of by the applicant, a stay-at-home mother, and they miss her terribly in her absence. The record also contains a letter from the applicant's neighbor, [REDACTED]. The applicant's neighbor asserts in her letter that since the applicant's departure the applicant's children have been sick, and her son is constantly asking about when his mother is coming home. The neighbor indicates that the applicant's spouse is having a hard time leaving the children with different people. She contends that the applicant is desperately needed at home for the sake of her children.

The AAO recognizes that the applicant's spouse is suffering emotionally due to the impact of his children's separation from their mother. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and, based on the record, does not rise to the level of extreme hardship when combined with other hardship factors. 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 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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Furthermore, the AAO finds that the financial impact of the applicant’s departure from the United States is not clearly demonstrated in the record. The applicant’s spouse states in his letter, dated July 26, 2006, that he is working long hours in construction to sustain two households. However, he failed to illustrate his earnings and expenses or his assets and liabilities. Counsel asserts in his appeal brief that the economic hardship on the applicant’s spouse is greater than most due to the need for childcare for his two young children. The AAO notes that assertion is contradicted by the applicant’s spouse’s claim that his mother is caring for his children. Counsel further asserts that the loss of any future income the applicant could provide after her children grow would also hurt the family. However, this assertion is unsupported by the record as there is no indication in the record of the applicant’s educational background, her profession, or earning potential. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Lastly, the record reflects that on appeal, the applicant furnished copies of two contracts to convey land to her and her spouse and a property tax assessment addressed to her spouse. However, the relevance of these documents is unclear as there is nothing in the record to link these documents to a claim of financial hardship or other type of hardship to the applicant’s spouse.

Finally, the applicant has not demonstrated that her spouse would suffer extreme hardship if he accompanied her to Mexico. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the 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. The applicant’s spouse has failed to describe any hurdles he and his children may suffer if he accompanied the applicant to Mexico. Specifically, he has not described any cultural or linguistic hurdles he and his children may encounter should they move to Mexico. Nor has he discussed any financial hurdles, such as finding employment and housing in Mexico. There is no indication in the record of where the applicant is currently residing in Mexico and her source(s) of financial support. The AAO observes that the applicant’s spouse’s birth

certificate reflects that his parents are from Mexico, indicating that he is likely familiar with the Mexican culture, and may have family members residing in the country.

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission to the United States. 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. Accordingly, the letters from the applicant's friends, [REDACTED] and [REDACTED], which solely address her good character, will not be discussed in these proceedings.

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.