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FILE: [REDACTED]  
(CDJ 2004 690 005 relates)

Office: CIUDAD JUAREZ, MEXICO

Date: APR 17 2007

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, Ciudad Juarez, 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 readmission within 10 years of his last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge concluded that the applicant failed to establish that his qualifying relative would undergo extreme hardship through his continued inadmissibility. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated September 20, 2005.

On appeal, the applicant's spouse states that she is very depressed and is suffering from anxiety because of being separated from the applicant. *Spouse's Brief*, dated October 28, 2005.

In the present application, the record indicates that the applicant entered the United States without inspection in May 1994. The applicant remained in the United States until March 2005. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until March 2005, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his March 2005 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 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 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.

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 on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 alien 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 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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or in the event that she resides in the United States, as she is not required to reside outside

of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The applicant's spouse states that since the applicant left the United States, she has been very depressed. She states that she needs the applicant's emotional and spiritual support especially after the loss of her child during her first pregnancy in March 2005. *Spouse's Brief*, dated October 28, 2005. The applicant's spouse submitted medical records showing that her pregnancy was terminated on March 23, 2005 in Los Angeles, following a diagnosis of "misses abortion," i.e. a diagnosis that her pregnancy was no longer developing normally. The psychological report submitted, by Dr. [REDACTED] states that the applicant's spouse had a miscarriage on March 7, 2005, while in Mexico for the applicant's immigration proceedings and that the loss of her child left her with deep emotional scars. *Psychological Evaluation from Dr. [REDACTED]*, dated October 7, 2005.

The applicant's spouse states that she consulted a priest about her depression and he told her that she should seek professional help. *Spouse's Brief*, October 28, 2005. The spouse submitted a letter from R [REDACTED] dated September 22, 2005, which states that the applicant's spouse has gone through a lot after her forced separation from the applicant and that she needs the applicant's support and care to overcome her extreme depression.

The applicant's spouse also states that R [REDACTED] referred her to a psychologist for her depression. The report from Dr. [REDACTED] indicates that she interviewed the applicant's spouse for two hours on October 1, 2005 and that the following psychometric instruments were also utilized for her evaluation: Mental Health Exam, Beck Depression Inventory II, Beck Anxiety Inventory and the Achenbach Adult Self-Report. Dr. [REDACTED] concludes that the applicant's spouse is experiencing an Adjustment Disorder with Mixed Anxiety and Depressed Mood (DSM-IV: 309.28). The tests that were given to the applicant's spouse put her in the 97<sup>th</sup> percentile for anxiety and depression problems. Dr. [REDACTED] concludes that a prolonged separation from her husband would cause the applicant's spouse to develop a full Major Depressive Disorder (DSM-IV Diagnosis 296.2).

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between the applicant's spouse and Dr. [REDACTED]. Accordingly, the conclusions reached in the report do not reflect that insight and detailed analysis commensurate with an established relationship with a mental health professional and are of diminished value to a determination of extreme hardship. However, the AAO notes the medical documentation submitted by the applicant's spouse in relation to the medical termination of her pregnancy and acknowledges the emotional trauma created by that termination. The AAO concludes that, if the applicant's spouse remains in the United States, a long-term separation from the applicant would, in light of the loss of her child, would constitute extreme hardship.

The only statements made in regard to the hardship that would be experienced by the applicant's spouse if she relocated to Mexico are found in Dr. [REDACTED] evaluation. Dr. [REDACTED] states that the applicant's spouse cannot relocate to Mexico because she needs to work in the United States and pay off her debts as well as take care of her parents. Dr. [REDACTED] states that the applicant's spouse lives with

her parents<sup>1</sup> and that she helps to support them. She also reports that the applicant's spouse has no family in Mexico and that her entire family lives in the United States. Dr. [REDACTED] indicates that the applicant left Mexico when he was 17 years old and that his spouse fears for his safety and wellbeing. She asserts that the possibility of finding adequate employment in Mexico is very small. The AAO notes that the record contains no documentation to support these statements. No country condition information was submitted to show that the applicant and/or his spouse would not be able to find employment in their fields of work. No documentation was provided to show that the applicant's spouse is the only person able to care for her parents, that she lives with her parents and that they are in need of her care. The applicant must submit documentation to support his claims. In the current record, he has not done so, therefore, the applicant has not established that his spouse would suffer extreme hardship as a result of relocating to Mexico.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

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.

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<sup>1</sup> The AAO notes that [REDACTED] states that the applicant's spouse lives with her parents, but also reports that she and the applicant recently bought a house for which she must now make payments.