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U.S. Citizenship  
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FILE:

Office: CIUDAD JUAREZ, MEXICO

Date:

AUG 28 2007

IN RE: Applicant:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Ciudad Juarez, Mexico, and 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, pursuant to the record, admitted on April 6, 2005 to the interviewing officer at the American Consulate General in Ciudad Juarez, Mexico that she had entered the United States without inspection in April 1996 and had remained until April 2005, when she voluntarily departed the United States. The applicant accrued unlawful presence in excess of one year. Thus, the officer in charge determined that the applicant was inadmissible under Section 212(a)(9)(B) of the Act, which 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...

Moreover, the officer in charge concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, November 22, 2005.

In support of the appeal, the following documents were provided: a letter from the applicant's representative, dated December 5, 2005; a declaration from the applicant's spouse, dated December 1, 2005, and evidence of his U.S. citizenship; the applicant's marriage certificate and translation; the applicant's children's U.S. birth certificates; photographs of the applicant and her family; a letter and translation in support of the applicant's spouse's behalf; and letters and translations from physicians regarding the applicant's children's medical conditions. The entire record was reviewed and considered in rendering this decision.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to a section 212(a)(9)(B)(v) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

To begin, the applicant's representative states that the applicant's spouse, a naturalized U.S. citizen, "...has been experiencing extreme hardship due to the separation of his family...[the applicant's spouse] has been suffering extremely as a consequence of this separation and continues to be greatly affected by the entire situation." *Letter from [REDACTED], BIA Rep., [REDACTED]* dated December 5, 2005. The applicant's spouse further details the hardships he has experienced. As he states, "...Due to this separation I have also been affected not only emotionally as this separation has made me feel depress[ed] to see my family separated for such [a] long time....As a consequence of this separation I have suffered extremely and this has caused a great hardship for myself and our children...If I end up a nervous breakdown this will have a great effect on my and my family." *Declaration of [REDACTED]*, dated December 1, 2005.

There is no documentation establishing that the applicant's spouse's financial, emotional or psychological hardship is any different from other families separated as a result of immigration problems. Moreover, no objective evidence is provided to corroborate the applicant's spouse's statements regarding his depression and distress, such as statements from a professional in the medical field documenting that the applicant's spouse is suffering from a medical condition due to the applicant's absence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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.

The applicant's spouse further states that their son, [REDACTED] born on February 20, 1997 in the United States, has remained in the United States with the applicant's spouse and "...wakes up crying every night for his

mother's absence..." *Id.* at 2. A translated letter from [REDACTED], General Medicine, Medical Unit Sante Fe, states that [REDACTED] has been brought by his father...during the past six months due to symptoms of depression as a consequence of his separation from his mother. This child lacks interest in daily activities at home and school and has lack of appetite." *Letter from* [REDACTED], dated November 30, 2005. In addition, their daughter, Pricila, born on February 10, 2001 in the United States, accompanied the applicant to Mexico and "...has gotten sick on several occasions because she is not accustomed to the climate and living conditions in Mexico..." *Supra* at 2.

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) of the Act does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant or his children cannot be considered, except as it may affect the applicant's spouse. While the applicant's spouse may need to make other arrangements with respect to the children's continued physical and psychological care, children are not qualifying relatives for purposes of an inadmissibility waiver and it has not been established that any new arrangements for the psychological, emotional and financial care of the children would cause extreme hardship to the applicant's spouse.

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. In this case, the applicant's representative has not asserted any reasons why the applicant's spouse is unable to relocate to Mexico. As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were not permitted to return to the United States for ten years, and moreover, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship were he to relocate to Mexico to accompany the applicant. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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 remains entirely with the applicant. 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.