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U.S. Citizenship and Immigration Services

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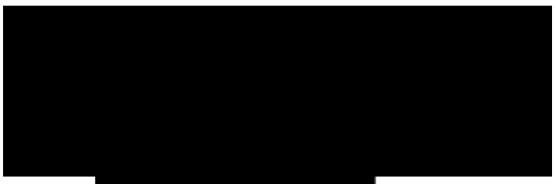

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date: SEP 20 2007
(CDJ 1995 629 265 relates)

IN RE: Applicant: [redacted]

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:

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, 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 March 18, 2005 to the interviewing officer at the American Consulate General in Ciudad Juarez, Mexico that she had entered the United States without inspection in August 2000 and had remained until July 2002, when she voluntarily departed the United States. The officer in charge determined that the applicant was inadmissible under Section 212(a)(9)(B)(i)(II) 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 Ground of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge,* dated November 18, 2002.

In support of the appeal, the applicant has provided the following documents: letters from the applicant, the applicant's spouse, and the applicant's two daughters; copies of U.S. birth certificates for the applicant's three children; a copy of the applicant's marriage certificate and translation; copies of the applicant's and the applicant's spouse's birth certificates and translations; and evidence of the applicant's spouse's U.S. permanent residence. 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. 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 record contains references to the emotional hardship that the applicant's children are suffering due to the applicant's inadmissibility. As stated by one of the applicant's daughters aged 14 at the time the appeal was filed, "...the situation of my parents as [sic] affected me very much. I can't sleep at night. Because I do not understand why we had to come back to live over here in Mexico. I wish you would give my mother her recidecy [sic] to her so we could go back to the United States and live with my father..." *Letter from* 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 his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself 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 their children cannot be considered, except as it may affect the applicant's spouse. It has not been established that the children's emotional sufferings due to the applicant's inadmissibility are causing the applicant's spouse extreme hardship.

The applicant further states that the applicant's spouse "...is so sad, tierd [sic], and unhappy. He is very depressed and desperate for help..." *Letter from* No objective evidence is provided to corroborate the applicant's statements regarding the applicant's spouse's mental state, 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.

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.

In addition, the applicant states that she needs a waiver so that she may reside in the United States to "...help him [the applicant's spouse] payt [sic] our home and bills..." *Id.* at 1. The applicant has not provided an explanation for why she is unable to assist the applicant's spouse with respect to the finances of the U.S. household by obtaining employment in Mexico. 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)).

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."). Based on the evidence provided, it has not established that the applicant's spouse is suffering extreme emotional and financial hardship due to the applicant's absence.

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 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 lawful permanent resident spouse would suffer extreme hardship if she were not permitted to return to the United States, and moreover, the applicant has failed to show that her lawful permanent resident spouse would suffer extreme hardship were he to relocate to Mexico to accompany the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. 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.