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FILE:

Office: ANCHORAGE, ALASKA

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IN RE:

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

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 District Director, Anchorage, Alaska. 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 § 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 ten years of her last departure from the United States. The applicant is married to a naturalized citizen of the United States and seeks a waiver of inadmissibility in order to remain in the United States with her husband and children.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her lawful permanent resident (LPR) spouse. The application was denied accordingly. On appeal, counsel points out that the applicant's unlawful presence only became a problem after she left the United States in response to an interview notice issued by the U.S. consulate in Ciudad Juarez, Mexico. Counsel asserts that the applicant was erroneously informed by CIS personnel in Chicago that her departure, which triggered the bar to admissibility, would not cause her any trouble. This set of circumstances is unfortunate, but it does not alter the fact that the applicant's departure triggered the unlawful presence ground of inadmissibility. The applicant now bears the burden of establishing that her departure would cause her husband extreme hardship. Counsel contends that the applicant's husband will experience extreme emotional and financial harm due to the applicant's inadmissibility. On appeal counsel submits letters written by the applicant, her husband, her brother, a family friend, her husband's employer, and the church pastor, mortgage documents, a report by [REDACTED], a clinical psychologist, and other documents. The entire record was taken into consideration in rendering this decision.

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.

The applicant entered the United States without inspection in 1996, and she began accruing unlawful presence beginning on April 1, 1997, the date the unlawful presence provisions under the Act took effect. The applicant's husband filed a petition for alien relative on the applicant's behalf, and the petition was approved. After receiving an interview notice, the applicant left the United States in order to attend a "V" visa interview at the U.S. consulate in Ciudad Juarez on August 27, 2001. By that date she had accrued over one year of unlawful presence. In applying to adjust her status to that of LPR, the applicant is seeking admission within ten years of her August 2001 departure from the United States. The applicant is, therefore, inadmissible to the United States under § 212(a)(9)(B)(II) of the Act.

A § 212(a)(9)(B)(v) waiver of the bar to admission resulting from § 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 or her children experience upon deportation is irrelevant to § 212(a)(9)(B)(v) waiver proceedings, except insofar as it causes the qualifying relative to suffer in the extreme. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 § 212(i) 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.

Counsel asserts that the applicant's husband will face extreme hardship if he returns to his native Mexico in order to remain with the applicant. Counsel states that the applicant's husband would be unable to support his family if he relocates to Mexico. The record contains no documentation in support of this contention, however.

Counsel also maintains that the applicant's husband will suffer extreme hardship if the applicant is removed and he remains in the United States. Counsel contends that the applicant's husband would not be able to pay his mortgage and support the applicant in Mexico, and he would not be able to arrange childcare for his children in the applicant's absence. The record indicates that the applicant's brother and sister-in-law also live in Anchorage, and that the applicant and her family are well-liked members of their church and their community. The record does not contain any documentation in support of the assertion that the applicant's husband would be unable to obtain assistance in caring for the children. Moreover, the record does not establish that the applicant would be unable to live with family members in Mexico and would be unable to

work in her native country. It must also be pointed out that it is often necessary for spouses to rearrange their financial and living situations when faced with relocation outside the United States, and the type of financial challenges represented in the instant record cannot be considered extreme.

The record includes a letter written by [REDACTED], dated July 20, 2005. [REDACTED] indicated that he interviewed the applicant and her family members on July 20, 2005, and he expressed the opinion that the applicant's departure from the United States would cause her husband to suffer extreme psychological hardship. [REDACTED] did not provide any details regarding the applicant's husband's present or past psychological condition, nor did he include a specific prognosis or recommendation for therapy or medical care. The AAO is unable to conclude based on the evidence of record that the applicant's husband faces extreme emotional hardship in the applicant's absence.

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). 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), defined extreme hardship as hardship that exceeds 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. It is also noted that the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. See § 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.