U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: DEC 03 2009

(CDJ 2004 736 566 relates)

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 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. 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 reside with her U.S. citizen husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated March 30, 2007.

The record contains, *inter alia*: two letters from the applicant's husband, a psychiatric evaluation for copies of telephone bills; copies of receipts; a copy of a photograph of the applicant and her family; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

In this case, the district director found, and counsel concedes, that the applicant entered the United States without inspection in 2001 or 2002 and remained until March or April 2006. *Brief in Support of Application for Waiver of Grounds of Excludability* at 1, dated May 16, 2007. The applicant accrued unlawful presence for more than one year. She now seeks admission within ten years of her 2006 departure. Accordingly, she is 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 one year or more.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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, 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 under 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.

In this case, the applicant's husband, [redacted] states that he misses his wife and two sons. [redacted] contends it "affects [him] to know that [his] wife and kids health are in Ciudad Juarez [where] the[re is] contamination and a lot of kidnaps," as well as "pollution and corruption." [redacted] states he talks with his wife every day who says she is afraid to take the kids to the park because of kidnappings and shootings. In addition, [redacted] claims his wife is having financial problems because everything is expensive. According to [redacted] it is hard for his wife to live in an apartment in Mexico "that is unhealthy," and she is afraid of someone breaking into the apartment. *Letters from* [redacted] both dated April 4, 2006.

A psychiatric evaluation in the record states that [redacted] reported developing numerous symptoms since his wife and children departed the United States, including: difficulty concentrating, agitation, difficulty sleeping, nervousness, irritability, decreased appetite, and fatigue. According to the psychiatrist, [redacted] is experiencing symptoms of anxiety and depression as a result of being separated from his wife and children. The psychiatrist states that [redacted] works 40-60 hours a week and would be unable to care for his children himself. [redacted] reportedly prefers to have the children raised by their mother because he "has heard a lot of horror stories about what happens to children in

daycare." In addition, the psychiatrist stated that is concerned about his children's health because they missed their vaccination schedules that they would have had in the United States. [redacted] is also reportedly worried about his wife's health as she "will not eat for periods of time." The psychiatrist states [redacted] anxiety has affected his ability to perform his job and that he has received reprimands as a result. The psychiatrist diagnosed [redacted] with an adjustment disorder with mixed anxiety and depressed mood, and that he "is likely to develop a Major Depressive Disorder." The psychiatrist recommended psychological treatment for [redacted] in the form of psychotherapy. *Psychiatric Evaluation Report*, dated April 11, 2007.

After a careful review of the record, there is insufficient evidence to show that the applicant's husband has suffered or will suffer extreme hardship if his wife's waiver application were denied. Significantly, [redacted] does not discuss the possibility of moving to Mexico to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. Their situation, if [redacted] remains in the United States, is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (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).

Regarding the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record is based on a single interview the psychiatrist conducted with [redacted] on April 11, 2007. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. There is no evidence [redacted] has sought psychotherapy as recommended. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychiatrist, thereby diminishing the evaluation's value to a determination of extreme hardship.

To the extent fears for his wife's and children's health, there is no evidence in the record indicating they have any medical problems. Similarly, to the extent makes a financial hardship claim, aside from copies of telephone bills and receipts showing [redacted] has sent his wife money, the applicant did not submit evidence such as tax or financial documents, evidence addressing the couple's assets or their regular monthly expenses, or other documentation regarding [redacted] employment and wages. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In any event, even assuming some economic hardship, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 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.