**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]

DEC 07 2009

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
(CDJ 2004 828 735 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 is married to a U.S. citizen and 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 his wife and child in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated January 17, 2007.

On appeal, counsel contends the district director erred in finding the applicant departed the United States pursuant to a voluntary departure order with an alternate order of removal. In addition, counsel contends extreme hardship was established.

The record contains, *inter alia*: a marriage certificate of the applicant and his wife, [redacted], indicating they were married on June 18, 2003; a letter from [redacted] a letter from the applicant; a letter from [redacted] physician and copies of her medical records; a copy of the birth certificate of the couple's U.S. citizen son; copies of bills; several letters of support; 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 1996 and remained until February 2006. *Applicant's Appeal of Denial of Waiver of Inadmissibility* at 1, dated February 16, 2007. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in 2006. He now seeks admission within ten years of his 2006 departure. Accordingly, he 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, according to the applicant's attorney, [redacted] has been diagnosed with "medical conditions [that] are crucial and serious," including hyperthyroidism, blurred vision, and gastritis. According to counsel, [redacted] hyperthyroidism "is a very serious condition," as is her gastritis, which can lead to a severe loss in blood or an increase in the risk of developing stomach cancer. Counsel contends [redacted] blurred vision is a "frightful condition[, t]he consequences of [which] are endless," including the inability to drive, lack of mobility, or loss of vision. In addition, counsel contends [redacted] would suffer extreme financial hardship if the applicant's waiver application were denied. Counsel states that while the applicant lived in the United States, he earned $32,000 per year as a carpenter and was the family's sole's source of income. Counsel states the applicant has been unable to find employment in Mexico to support his family and that [redacted] is unable to pay the rent on her

own. Furthermore, counsel claims [redacted] who was born in the United States, cannot move to Mexico to be with her husband because she would not be able to find employment in Mexico and her medical conditions prevent her from exerting physical efforts in employment. Counsel states [redacted] needs to remain in the United States in order to continue receiving adequate care for her medical conditions. Moreover, counsel states [redacted] has suffered hardship directly and indirectly through the suffering of the couple's young child, who only knows his father through the telephone. *Applicant's Appeal of Denial of Waiver of Inadmissibility, supra.*

A letter from physician states that [redacted] "has been diagnosed with Hyperthyroidism, Blurred vision, and Gastritis." *Letter from* [redacted] dated February 8, 2007.

After a careful review of the record evidence, there is insufficient evidence to show that [redacted] has suffered or will suffer extreme hardship if her husband's waiver application were denied. As an initial matter, the AAO notes that counsel is correct that the record does not show that the applicant was ever in removal proceedings. The district director erred in stating that the applicant voluntarily departed the United States pursuant to a voluntary departure order with an alternate order of removal.

With respect to extreme hardship, although there is a letter from in the record, the letter is written in Spanish and has not been translated into English and consequently cannot be considered. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Accordingly, there are no statements from either the applicant or his wife addressing extreme hardship.

To the extent counsel contends [redacted] is suffering extreme hardship emotionally, financially, and physically, *Applicant's Appeal of Denial of Waiver of Inadmissibility, supra,* there is insufficient evidence the hardship is extreme. Although the AAO recognizes [redacted] has suffered hardship as a result of her husband's departure from the United States and is sympathetic to the family's circumstances, 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 financial hardship claim, there is no evidence substantiating counsel's claim that the applicant earned $32,000 per year and was the family's sole source of income when he lived in the United States. The unsupported assertions of counsel do not constitute evidence. *Matter of*

*Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant did not submit evidence such as tax records, documentation from his previous employer, or other evidence of his employment and wages. Furthermore, although the record contains copies of a gas bill, a phone bill, a DirecTV bill, and an electric bill, there is no evidence addressing the family's regular monthly expenses, such as rent, mortgage, or day care expenses. Without more detailed information, the AAO is not in the position to attribute any financial difficulties [redacted] may be experiencing to the applicant's departure. 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), *see also 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).

Finally, although the record shows [redacted] has been diagnosed with hyperthyroidism, blurred vision, and gastritis, the letter from [redacted]'s physician does not discuss the severity, prognosis, or treatment for these conditions. *Letter from* [redacted] *supra.* There is no evidence these conditions affect [redacted] daily life, if at all. For instance, there is no indication in the record addressing whether [redacted] vision is blurred all of the time or only part of the time, the extent of her condition, or whether this condition is permanent or temporary. There is no allegation she requires assistance, treatment, or medication because of any of her conditions. There is also no evidence [redacted] conditions could not be adequately monitored or treated in Mexico.

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