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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 843 519 (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:

[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).

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and 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 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 10 years of her last departure from the United States. The record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 in the United States with her United States citizen husband and daughter.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 12, 2007.

On appeal, the applicant, through counsel, asserts that "[t]he District Director erred in this case by applying a standard set forth in cases that dealt with a waiver for a previous removal or deportation." *Form I-290B*, filed May 14, 2007. The AAO notes that counsel is correct that the District Director cited application for permission to reapply cases; however, it appears the District Director relied on waiver cases in determining whether the applicant established extreme hardship to her qualifying relative.

The record includes, but is not limited to, counsel's brief; letters from the applicant's husband, father-in-law, and brother; a letter regarding the applicant's husband employment in the United States; utility bills; medical documents from Mexico for the applicant and her daughter; and medical documents for the applicant's father-in-law's medical conditions. The entire record was reviewed and considered in arriving at a 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-
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> . . . .
>
> (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 [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 AAO notes that the record contains references to the hardship that the applicant's daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant initially entered the United States on December 14, 1998 without inspection. On July 2, 2004, the applicant's naturalized United States citizen husband filed a Form I-130 on behalf of the applicant. On December 1, 2004, the applicant's Form I-130 was approved. In January 2006, the applicant departed the United States. On February 3, 2006, the applicant filed a Form I-601. On April 12, 2007, the District Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from December 14, 1998, the date the applicant entered the United States without inspection, until January 2006, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her January 2006 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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 states that the applicant and her husband "are dependent upon one another financially and emotionally. Their separation would not be a 'mere' separation. It is and will continue to cause [the applicant's husband] great hardship." *Brief*, page 7, filed June 11, 2007. Counsel further states that "[t]he hardship that [the applicant's husband] is suffering now is exacerbated by all that he suffered as a child losing his mother, being separated from his father, and then feeling rejected and unwelcome in his father's home." *Id.* at 11. In a letter dated June 4, 2007, the applicant's cousin, [redacted], states she is "worried about [the applicant's husband] because he feels depressed. He is always angry. He is at a point that [she] [is] concerned about his health." In a statement dated June 5, 2007, the applicant's husband states "[t]here are some days that [he] feel[s] depressed and [he] cannot wake up in the morning to go to work." Counsel states the applicant's husband "is suffering extreme anxiety from the uncertainty of [the applicant's] fate. [The applicant's husband] feels depressed, threatened and unsure wondering if [the applicant] will ever be able to come back to live with him." *Brief, supra* at 13. The AAO notes that other than statements from counsel, the applicant's husband, and his family, there are no professional psychological evaluations for the AAO to review to determine how the separation from the applicant is affecting the applicant's husband mentally, emotionally, and/or psychologically. The applicant's husband states he has "been suffering many health problems because of [his] emotional stress." The AAO notes that other than the applicant's husband statement, there is no medical documentation in the record establishing that the applicant's husband suffers from any medical conditions.

Counsel states the applicant's daughter will suffer extreme hardship by being separated from her relatives and having to attend school in Mexico. Counsel further states that "[s]ince [the applicant's daughter] began living in Mexico, [she] has suffered from many health problems requir[ing] lots of medical attention and prescriptions." *Id.* at 3. The AAO notes that medical documentation in the record establishes that the applicant and her daughter have been prescribed various medications; however, there is no legible statement from a doctor explaining what medical conditions the applicant and her daughter are suffering from. Additionally, the AAO notes that it appears that the applicant's daughter has been receiving treatment for her medical conditions in Mexico. Furthermore, the AAO notes that the applicant's daughter may be experiencing some hardship in residing in Mexico; however, she is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act.

Counsel states the applicant and her husband "are economically interdependent upon one another." *Id.* at 12. Counsel states the applicant's husband is the primary income provider in the family and it is "likely [he] would have many problems finding a job in Mexico.... [The applicant's husband] has been working in manual labor since he began working as a teenager." *Id.* at 17. The AAO notes that the applicant's husband works as a material handler, and it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Mexico and that there are no employment opportunities for him there. Counsel states the applicant's husband's family ties are in the United States, where he has resided since he was six years old. Counsel further states that if the applicant's husband "chose to move to Mexico with [the applicant], not only would he have to leave the country he dearly loves, he would be forced to abandon his father, his cousins and friends all of whom live in the United States.... [The applicant's husband] is very close to each and every one of his family members." *Id.* at 12. The AAO notes that even though the applicant's husband has resided in the United States for many years, he is a native of Mexico who speaks Spanish and it has not been

established that he has no family ties in Mexico. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined her in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment and in close proximity to his family. Counsel states the applicant's husband wants to stay in the United States to help care for his father who suffers from diabetes. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states the applicant's husband "is now supporting two households." *Id.* at 3. The AAO notes that beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States 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).

United States 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, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the Board 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 *Hassan, supra,* the Ninth Circuit Court of Appeals 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.

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 section 212(a)(9)(B) 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.