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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

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OCT 01 2009

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 765 132 (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 (INA), 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 District Director, Mexico City, denied the instant waiver application. 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, the wife of a U.S. citizen, the mother of a U.S. citizen son and of a U.S. citizen daughter, and the beneficiary of an approved Form I-130 petition.

The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband and children.

The district director also found that the applicant had failed to establish that failure to approve the waiver application would cause extreme hardship to her U.S. citizen spouse, and denied the application. On appeal, the applicant's representative submitted additional evidence. Although the applicant's representative and the applicant's husband did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(9)(B)(i) of the Act provides:

> Any alien (other than an alien lawfully admitted for permanent residence) who –
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> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or
> >
> > (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.

In a G-325A Biographic Information form that she signed November 14, 2005, the applicant stated that she had lived in Ohio since March of 2001. In an undated Form DS-230 immigrant visa application, the applicant stated that she had lived in Ohio since April 2001. The Form I-130 Petition for Alien Relative, which the applicant's husband signed on December 23, 2002, indicates that the applicant then lived in Ohio. A marriage license in the record shows that the applicant and her husband were married on September 24, 2002. The evidence demonstrates that the applicant was present in the United States for more than one year.

In a letter dated October 11, 2005, the applicant's husband indicated that he and his wife and children would be traveling to Mexico, from November 8 through November 10, 2005, for his wife's interview, and that afterwards she would return to the town of her birth in Mexico. In a letter dated November 11, 2005, the applicant's husband indicated that the applicant and the children were then in the state of Oaxaca, Mexico. The record does not show that the applicant has ever attained any legal status in the United States.

The record demonstrates that the applicant was unlawfully present in the United States from March or April of 2001 through approximately November 8, 2005, and has since left the United States. The evidence submitted does not sustain the applicant's burden of demonstrating that she was lawfully admitted or paroled into the United States or that she ever achieved any legal status in the United States. The AAO therefore finds that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

> The Attorney General [now Secretary of Homeland Security] 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 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is

diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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 various letters submitted in this matter the applicant's husband stated that his children become sick from the water and food in Mexico, his children are sad and lonely and do not like being in Mexico because they do not know anyone there, the separation will affect his family emotionally, he suffers without his wife and children, his wife and children suffer without his presence, he is feeling depression and stress, and he has insomnia.

The applicant's husband also stated that he is sending financial assistance to his wife and children while they are in Mexico, and that if his children return to the United States without their mother he will be obliged to hire a full-time nanny for them, but if they stay in Mexico he is concerned about the quality of their education, medical care, and nutrition.

The applicant's husband stated that Mexico has a high crime rate and that raising children there is difficult. He concluded that he believes that failure to approve the waiver application will cause extreme hardship to him and his children.

With his letters the applicant's husband submitted a 2005 Form W-2 Wage and Tax Statement showing that he earned $28,452.20 during that year. He also submitted rent, automobile insurance, and utility bills. Those bills clearly do not represent all of the applicant's husband's recurring expenses. The evidence is insufficient to show whether the applicant's husband is able to pay all of his expenses in the United States and assist his wife and family financially.

The applicant's husband has demonstrated that he has income and expenses in the United States and has stated that he sends money to support his family in Mexico. However, the record does not contain evidence and analysis sufficient to show that he is unable to support himself in the United States and his family in Mexico without suffering economic hardship which, when considered with the other hardship factors in this case, rises to the level of extreme hardship.

The applicant's husband has asserted that if his children return to the United States without their mother he will be obliged to hire a nanny. He did not state what relatives he has in the United States or where they live. He did not state whom he lives with or discuss whether someone other than his

wife or a nanny might be able to care for his children in the United States. Further, he did not indicate how much competent care for his children would cost or provide any analysis to support the assertion that he is unable to afford it. The evidence is insufficient to show that, if his wife remains in Mexico and his children join him in the United States, the applicant's husband will suffer economic hardship which, when considered with the other hardship factors in this case, would rise to the level of extreme hardship.

The applicant's husband did not discuss whether he is able to join his wife and children in Mexico without hardship, nor did he provide evidence on that point. The evidence and argument submitted is insufficient to establish that, if the applicant's husband joined her and the children to live in Mexico, it would cause him hardship which, when considered with the other hardship factors in this case, would rise to the level of extreme hardship.

The applicant's husband stated that the water and food in Mexico make his children ill. He provided no medical evidence, however, bearing on the frequency and severity of the illnesses alleged. The evidence does not show that the children of the applicant and her husband suffer illnesses of a frequency and severity sufficient to cause hardship to the applicant's husband which, when considered with the other hardship factors in this case, would rise to the level of extreme hardship.

The applicant's husband stated that Mexico has a high crime rate and that raising children there is difficult. He did not explain in what way Mexico is a difficult venue in which to raise children. He did not list the factors that make Mexico a difficult location for child rearing, other than the crime rate. He provided no information on the crime rate in general, or the crime rate in the state of Oaxaca, where the children are living, nor, even more specifically, Zimatlan, Oaxaca, the town in which the applicant and the children now appear to live.[1] He did not indicate in what concrete way the alleged high crime rate is likely to affect his children. The applicant's husband did not demonstrate that Mexico is a difficult place to raise children, or, if it is, that the hardship that factor is causing him, when considered together with the other hardship factors in this case, rises to the level of extreme hardship.

Although the applicant's husband asserted that his children are sad and lonely and do not know anyone in Mexico, and that living away from him and in Mexico was doing them psychological harm, he presented no psychological testimony to demonstrate that the hardship to him from this factor is worse than would be expected in a typical case of children obliged to live in a new environment. Further, he did not discuss how this factor causes him, the applicant's husband, hardship.

Although he asserted that he, too, is suffering from stress, depression, and amnesia because of the separation from his wife and children, the applicant's husband provided no evidence from which one might determine that the hardship that results to him is worse, or is likely to become worse, than the

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[1] The applicant's husband indicated on the Form I-130 petition that the applicant was born in Zimatlan. The applicant indicated, in his letter of October 11, 2005 that his wife was returning to her place of birth.

hardship than would ordinarily accrue to a person who chooses to live separately from his spouse as a consequence of removal or inadmissibility. The applicant's husband has not demonstrated that the emotional and psychological hardship caused to him, both directly and indirectly through emotional and psychological hardship caused to his children, when considered together with the other hardship factors in this matter, rises to the level of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is unable to return to the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or children is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases.

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), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.