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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 781 480 (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 Rhew

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 children.

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 October 23, 2006.

On appeal, the applicant, through counsel, claims that the "level of hardship facing [the applicant's] U.S. citizen husband...have changed and worsened warranting a review of this waiver." Legal Memo, dated September 21, 2006.

The record includes, but is not limited to, counsel's legal memo, an affidavit from the applicant's husband, a letter from [redacted], Mexican medical documents regarding the applicant's children's medical conditions, and the applicant's marriage certificate. 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.-
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> (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 several references to the hardship that the applicant's children 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 children 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 in August 1999 without inspection. On March 10, 2001, the applicant's lawful permanent resident husband filed a Form I-130 on behalf of the applicant. On December 3, 2001, the applicant's husband filed another Form I-130 on behalf of the applicant. On December 28, 2001, the applicant's Form I-130 was denied. On May 7, 2003, the applicant's husband became a United States citizen. On May 22, 2003, the applicant's husband filed another Form I-130 on behalf of the applicant. On August 27, 2004, the applicant's Form I-130 was approved. In October 2005, the applicant departed the United States. On November 1, 2005, the applicant filed a Form I-601. On October 23, 2006, 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 August 1999, the date the applicant entered the United States without inspection, until October 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her October 2005 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's children "have been experiencing medical problems since November 30, 2005. These medical problems have greatly heightened the financial and emotional hardship on [the applicant's husband]." *See legal memo, supra.* In an undated letter, [redacted]. states the applicant's children "have been continuously ill with Respiratory problems, gastrointestinal problems and dermatology problems." In a letter dated November 10, 2006, [redacted] states the applicant's children "have been continuously ill with Respiratory problems and gastrointestinal problems.... These health issues are being caused due to the environment where they live. [He] strongly suggest[s] that they be transferred to their place of origin as soon as possible." The AAO notes that [redacted] states the applicant's children have been receiving treatments in Mexico and they "have had a good outcome." Therefore, there is no evidence in the record that the applicant's children cannot be treated for their medical conditions in Mexico or that they have to remain in the United States to receive treatments. Additionally, the AAO notes that the applicant's children may be experiencing some hardship in residing in Mexico; however, the applicant's children are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act.

In an affidavit dated November 20, 2006, the applicant's husband states his separation from the applicant and his children "has been very difficult for [their] family both financially, emotionally and psychologically." In a letter dated November 21, 2006, [redacted] states the applicant's husband is "suffering from depression, and now he has high blood pressure." The AAO notes that other than statements from the applicant's husband and [redacted] there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any depression or whether any depression is beyond that typically experienced as a result of deportation or inadmissibility. Additionally, the AAO notes that there is no other evidence in the record establishing that the applicant's husband is currently suffering from any medical conditions. In a statement filed November 29, 2005, the applicant's husband states he is employed in the United States; however, the AAO notes that it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Mexico or that employment would be available to him in Mexico. Additionally, the AAO notes that the applicant's husband is a native of Mexico who speaks Spanish, he spent his formative years in Mexico, 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. 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. The applicant's husband states that now that the applicant is in Mexico, he has to maintain two households. The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to her husband'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.