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

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H2.

FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: **OCT 09 2009**
CDJ 2004 820 569

IN RE: [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).

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 30-year-old 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. The applicant is married to a citizen of the United States, and he seeks a waiver of inadmissibility under 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 stepson in the United States.

The District Director found that the applicant failed to establish extreme hardship to his spouse, and denied the application accordingly. *Decision of the District Director*. On appeal, the applicant's wife contends through counsel that the denial of the waiver imposes extreme hardship on her and her son. *See Form I-290B, Notice of Appeal*; *Brief in Support of Appeal*.

The record contains, *inter alia*, an affidavit and a letter from the applicant's wife discussing the hardships imposed on her as a result of family separation; a psychological evaluation report of the applicant's wife prepared by a licensed clinical psychologist with Psychological Assessment Services on December 4, 2006; a letter from the applicant's stepson's school, noting his enrollment in a high school special education program; a letter from Countrywide Home Loans; letters from the applicant's neighbor, church, and local police department; family photographs; and a brief on appeal. The entire record was reviewed and considered in rendering this decision on appeal.

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

> (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

> [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.

8 U.S.C. § 1182(a)(9)(B).

The record shows that the applicant entered the United States without being inspected and admitted in or around September, 1998. *See Form 1-601, Application for Waiver of Ground of Excludability*; *Decision of the District Director, supra* at 2. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on July 8, 2002, and U.S. Citizenship and Immigration Services (USCIS) approved the petition on October 15, 2003. *See Form 1-130, Petition for Alien Relative.* The applicant departed the United States in February, 2006. *See Form I-601, supra.* The applicant's unlawful presence for one year or more after April 1, 1997, and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).[1]

In order to obtain a section 212(a)(9)(B)(v) waiver, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawfully resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (omitting consideration of hardship to the applicant and to his or her children). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she accompanies the applicant to the home country, and in the event that he or she remains in the United States. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is 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 (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N

[1] The District Director erred in characterizing the ground of inadmissibility in section 212(a)(9)(B)(i)(II) of the Act as a "permanent bar to admission." *See Decision of the District Director, supra* at 3. Rather, departure after unlawful presence of one year or more triggers a ten-year bar to admission. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(II).

Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

> 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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." *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 BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant's spouse is a 45-year-old native of Mexico and citizen of the United States. *See Form I-130.* Although the record does not contain a copy of the marriage certificate, it appears that they have been married for eight years. *See id.* The applicant's wife has a daughter and a son from a previous marriage. *See Psychological Report, supra.* The applicant's spouse asserts that she is suffering extreme psychological and financial hardships as a result of the separation from the applicant.

In support of the psychological hardship claim, the applicant's wife states that she is "dependent on [her] husband for [her] physical, emotional and family needs." *Affidavit of* [redacted]. The applicant has helped her parent her teenage son, and the applicant's wife states that the breakup of their "tight-knit" family would cause "catastrophic damage" to all of them. *Id.* [redacted] also contends that she "ha[s] been seeing a therapist on account of the depression and emotional problems [she] ha[s] been having since he has been stuck in Mexico." *Id.* The applicant's wife reported anxiety, depression, lack of impulse control, multiple fears, and other difficulties during a psychological evaluation conducted on December 4, 2006. *See Psychological Report, supra.* The psychologist opined that "not allowing [redacted] to immigrate to the United States to be

united with his family will have a detrimental impact on the emotional and financial well being of [redacted] and her children." *Id.* The psychologist also stated his belief that [redacted] son would suffer serious psychological damage and other problems if they moved to Mexico to reside with the applicant. *Id.* The record indicates that the applicant's stepson has participated in a special education program. *See Letter from* [redacted]; *Letter from* [redacted] In support of the financial hardship claim, the applicant provided a letter from a home loan consultant noting that the applicant's wife "has been struggling to make her home mortgage payments . . . due to the loss of the extra income from the husband." *See* [redacted] *Letter.*

Although the record suggests that family separation causes various hardships to the applicant's spouse, the evidence presented is not sufficient to support a claim of hardship that rises beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. The AAO notes that although the input of any mental health professional is respected and valuable, the psychological report in the record is based on a single interview between the applicant's spouse and a psychologist. The record does not reflect an ongoing relationship between a mental health professional and the applicant's spouse, or any history of treatment for the reported anxiety and depression. 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 psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627, *supra*. Further, the hardship to the applicant's stepson is not calculated in the extreme hardship analysis, except as it may affect the applicant's qualifying relative. *See* 8 U.S.C. § 1182(a)(9)(B)(v) (omitting consideration of hardship to the applicant and to his or her children). Finally, there is insufficient evidence in the record regarding the couple's financial situation to support the applicant's wife's claims of extreme financial hardship. *See Matter of Soffici,* 22 I&N Dec. 158, 165 (Commr. 1998) (requiring supporting documentary evidence in order to meet the burden of proof); *see also INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (holding that the mere showing of economic detriment is insufficient to warrant a finding of extreme hardship).

Regarding potential relocation to Mexico to live with the applicant, the applicant's wife requests "the chance to live a peaceful, happy, productive life here in the United States," and states that these opportunities are not available in any other country. *See Affidavit of* [redacted]. Additionally, as noted above, the record contains a psychological report that speculates that relocation would be difficult for the applicant's stepson. Given the applicant's wife's family ties to her children in the United States, it appears that relocation to Mexico could impose hardship. However, the record does not support a finding that these difficulties would be unusual or beyond that which would normally be expected upon relocation. *See Perez,* 96 F.3d at 392. The applicant's wife's claims of extreme hardship upon relocation to Mexico are not supported by evidence of, for example, country conditions in Mexico and the financial consequences of departure. *See Soffici,* 22 I&N Dec. at 165.

In sum, although the applicant's spouse has presented some evidence of harm based on family separation or relocation, the record does not contain sufficient evidence to show that the difficulties encountered by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for an 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.