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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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[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: OCT 28 2009
(CDJ 2004 815 684 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).

Ellen C. Johnson

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 naturalized 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 children 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 December 11, 2006.

On appeal, counsel contends that the district director erred in concluding the applicant failed to establish extreme hardship if his waiver application were denied.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [redacted] indicating they were married on July 17, 2004; an affidavit and two statements from [redacted] a psychological report for [redacted], a letter from [redacted]'s employer; a copy of [redacted] mortgage statement; a copy of [redacted] naturalization certificate; 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 record indicates, and counsel does not contest, that the applicant entered the United States in 1999 without inspection and remained until 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 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 U.S. citizen or lawfully resident spouse or parent of the applicant. 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, the applicant's wife, [redacted], states that she and the applicant have a one-year old son and that she has a thirteen-year old son from a previous relationship. [redacted] states she would be unable to bring her older son to Mexico because his father lives in California and helps her take care of him. In addition, [redacted] states that her entire immediate family resides in the United States, including her siblings and her parents, that she has no family in Mexico, that she does not speak Spanish very well, and that she would be unable to find work in Mexico. She contends the applicant has been a great father to both of her sons and that they need their father. Furthermore, [redacted] states the applicant works full-time and makes sure that their family is economically stable and healthy. She claims she "would have to go on welfare" if the applicant's waiver application were denied. [redacted] states she has a mortgage to pay and that her husband helps her with the payments. [redacted] also contends she has "severe medical issues, and ha[s] been regularly seen by a Psychiatrist." According to [redacted] she has severe bouts of depression and takes medication. She claims she cannot live apart from her husband and that it would cause a terrible emotional impact on her. *Affidavit of Extreme*

Hardship by [redacted] dated January 3, 2007; *Letter from* [redacted] dated July 27, 2006; *Hardship Statement by* [redacted] dated January 27, 2006.

The record contains an Initial Psychiatric Report. The report states that [redacted] is not currently taking any medications, denies having any medical problems or issues, and has never been psychiatrically hospitalized. The report states [redacted] has had recurrent major depressive episodes since middle adolescence and that her current episode began when her husband departed the United States. The report further states that there is a questionable family psychiatric history for depression. The report indicates a diagnosis of major depressive disorder and indicates [redacted] will be put on an anti-depressant. The report states [redacted] shall return for follow-up in one month. *Initial Psychiatric Report by* [redacted] dated December 21, 2006.

After a careful review of the evidence, it is not evident from the record that the applicant's wife, [redacted] would suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO finds that if had to move to Mexico to be with her husband, she would experience extreme hardship. The record shows that has a son from a previous relationship and that if she were to move to Mexico, she could not take her son with her. In addition, [redacted] would be separated from her parents and her siblings who live in the United States, and she has no family in Mexico. In sum, the hardship [redacted] would experience if she had to move to Mexico is extreme, going beyond those hardships ordinarily associated with deportation.

Nonetheless, [redacted] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. While the AAO recognizes the challenges of single parenthood, [redacted] hardship does not rise to the level of extreme hardship based on the record. Although the AAO is sympathetic to the family's circumstances, if [redacted] remains in the United States, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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).

With respect to the psychiatric report in the record, although the input of any mental health professional is respected and valuable, the AAO notes that the report in the record is based on a single examination the psychiatrist conducted with [redacted] on December 21, 2006. There is no indication any psychological tests were conducted, and although [redacted] claims she has been "regularly seen by a

Psychiatrist," *Affidavit of Extreme Hardship, supra,* there is no evidence she has regularly seen any mental health professional. Indeed, the psychiatric report, dated December 21, 2006, specifically states that [redacted] "shall return to the clinic for follow-up in one month," *Initial Psychiatric Report, supra,* yet [redacted]s affidavit in which she claims she regularly sees a psychiatrist is dated just two weeks later on January 3, 2007. *Affidavit of Extreme Hardship, supra.* Therefore, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife, diminishing the report's value to a determination of extreme hardship. Although the record contains evidence that [redacted] suffers from depression and takes an anti-depressant, there is no evidence the hardship [redacted] is experiencing is any greater than those hardships ordinarily associated with deportation.

Regarding [redacted] financial hardship claim, there is insufficient evidence in the record to show extreme financial hardship. There is no evidence addressing to what extent, if any, the applicant helped to support the family while he was in the country. There are no tax documents in the record, no evidence from employers verifying the applicant's past or current employment, and no documentation regarding his wages. 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, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *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).

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 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.