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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: OCT 28 2009

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).

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. 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 twenty-nine year-old native and citizen of Mexico who was found 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 a period of one year or more. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. She 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 return to the United States and reside with her husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 5, 2007.

On appeal, counsel for the applicant asserts that the applicant's husband is experiencing extreme psychological and financial hardship as a result of their separation. Specifically, counsel states that the applicant's husband is supporting himself and the applicant and their child in Mexico and must send additional money because their child is frequently ill in Mexico and must visit the doctor and take medication. *See Counsel's Letter in Support of Appeal.* Counsel states that the applicant's husband must also provide financial support for a child from a previous relationship and the situation has become overwhelming financially. *Letter in Support of Appeal.* Counsel further claims that the applicant's husband was devastated emotionally when he learned that he would be separated from the applicant for a period of ten years and has been anxious and depressed due to separation from his wife. *Letter in Support of Appeal.* Counsel further maintains that the applicant's husband would suffer financial hardship if he relocated to Mexico because he would be unable to find work there due to injuries he suffered in an automobile accident in 1999. *Letter in Support of Appeal.* In support of the appeal, counsel submitted a psychological evaluation of the applicant's husband, copies of birth certificates and permanent resident cards for the applicant's husband and parents and siblings, copies of school records for the applicant's husband, a copy of his car title, and a declaration prepared by the applicant's husband. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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 Secretary, 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.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relatives for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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 BIA 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, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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 *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. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), 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 is a twenty-nine year-old native and citizen of Mexico who resided in the United States from July 2002, when she entered without inspection, to April 2006, when she returned to Mexico. The record further reflects that the applicant's husband is a thirty-four year-old native and citizen of the United States whom she married on May 3, 2004. The applicant resides in Mexico with their children and her husband resides in Austin, Texas.

Counsel asserts that the applicant's husband is suffering psychological hardship due to separation from the applicant. In support of this assertion, counsel submitted a psychological evaluation of the applicant's husband prepared by psychotherapist [redacted] The evaluation is based on three interviews with the applicant's husband and states that he is feeling "anxious, preoccupied and worried about his family" and has had sleep difficulties and had lost over twenty pounds. *Evaluation by* [redacted] It further states that he is "flooded with thoughts," including irrational thoughts that the applicant will leave him and is also worried about the health of his son and the applicant, who at the time of the evaluation was pregnant. *Evaluation by* [redacted] Mr. [redacted] additionally states that the applicant's husband "has become depressed to the point that he questions whether his life is worth living" and questions whether he should work or go on living if he does not have his family. Further, the applicant's husband reports that the applicant has stated that she was desperate and would kill herself and the children if she could not be with the applicant, which has caused the applicant's husband to feel frightened and desperate. The evaluation concluded that his symptoms of depression seem to be severe and a diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood, severe, appears appropriate. [redacted] recommends that the applicant's husband seek out psychotherapy to address his depression and anxiety as well as a psychiatric evaluation to determine if medication is appropriate.

The record indicates that the applicant is experiencing symptoms of depression due to separation from the applicant and his son, concerns about their health and safety in Mexico, and financial difficulties resulting from having to support two households. The AAO notes that no documentation was submitted concerning the applicant's husband's income, expenses, or the physical injuries counsel claims affect his ability to perform his job duties. Nevertheless, the psychological evaluation, which was prepared after three interviews with the applicant's husband, provides significant detail about the applicant's husband's mental state and the symptoms on which the diagnosis of depression and anxiety is based. It indicates that the applicant's husband is experiencing depression to the extent that he questions whether life is worth living without his family, and that the applicant has stated in desperation that she would kill herself and her children if she cannot be with her husband. Under these circumstances, it appears that the applicant's husband is experiencing emotional and psychological hardship that rises to the level of extreme hardship if the applicant is denied admission to the United States and he remains separated from her and their children.

Counsel asserts that the applicant would suffer financial hardship if he relocated to Mexico because any work available would most likely involve physical labor, which the applicant's husband cannot perform because of injuries resulting from an April 1999 car accident. No documentation was submitted to support counsel's assertions concerning conditions in Mexico and no medical evidence was submitted indicating that the applicant's husband suffers from any significant medical condition that would prevent him from finding employment in Mexico. There is no evidence on the record indicating that the applicant's husband would suffer extreme hardship if he relocated to Mexico, such as documentation of the income of the applicant's husband in the United States, information on economic and social conditions in Mexico, or other information related to the effects of relocation to Mexico on the applicant's husband. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)).

The evidence on the record is insufficient to establish that the applicant's husband would experience hardship beyond the type of hardship that a family member would normally suffer as a result of deportation or exclusion if he relocated to Mexico. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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. 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.