U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Citizenship
and Immigration
Services

[redacted]

H2

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: SEP 01 2009

(CDJ 2004 779 428 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

John F. Grissom
Acting 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. § 212(a)(9)(B)(v), in order to reside with her husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated January 24, 2007.

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

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted], indicating they were married on January 30, 2004; two letters from letters of support; financial and tax documents; a psychological report for and his three stepsons; a letter from [redacted] employer; 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 district director found, and counsel admits, that the applicant entered the United States without inspection in 1999 or 2000 and remained until 2006. Therefore, the applicant accrued unlawful presence of over one year. She now seeks admission within ten years of her 2006 departure. Accordingly, she 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 husband, [redacted] states that since his wife left the United States, he and their four children, three from the applicant's previous marriage, have missed her. [redacted] states that two of their four children are receiving medical treatments. Their youngest child, [redacted] is receiving treatment for an ear infection, and [redacted] stepson, [redacted], is receiving treatment for chronic asthma, frequently gets ear infections, and has severe allergies. In addition, [redacted] states that since his wife left the United States, he has suffered extreme financial hardship. He claims that his wife's income is essential to their family and that it is impossible for him to make all of the household payments on his salary alone. *Letter from* [redacted], dated June 11, 2007; *Letter from* [redacted] *and* [redacted], undated.

A psychological examination in the record states that [redacted] grew up with an alcoholic father who physically abused his mother. In addition, the psychologist states that [redacted] three stepsons have no contact whatsoever with their biological father. The psychologist states that it has been very difficult for [redacted] to discipline his three stepsons. According to the psychologist, after the applicant was

denied entry into the United States, in October 2006, [redacted] moved to Tijuana with his three stepsons in order to be with his wife. He states that [redacted] now rents a house in Tijuana and that he and his stepsons wake up at 2:30 a.m. every morning to cross the border into the United States so that [redacted] can go to work and the boys can attend school. According to the psychologist, this commute into the United States every morning is approximately a 55-mile drive in each direction and may take several hours depending on traffic and movement at the border crossing. The psychologist states that [redacted] does not believe this is a sustainable situation and will not move to Mexico permanently because his stepsons refuse to move to Mexico permanently, and [redacted] life's work and his earning potential is far greater in the United States than in Mexico. Furthermore, the psychologist states [redacted] indicated he is in good health, does not have any illnesses, and is not taking any medications. Moreover, the psychologist noted that the applicant's oldest son, [redacted], who is currently twenty years old, speaks Spanish and lived in Mexico City until he was five years old. According to the psychologist, [redacted] adamantly refuses to move to Mexico, indicating he would finish high school and stay in the United States on his own if he had to. The applicant's second oldest son, [redacted], who is currently nineteen years old, admitted to the psychologist that he has been using marijuana and alcohol occasionally since his mother departed the United States, but does not think it has become a problem yet. The psychologist states that the applicant's youngest son, [redacted], who is currently nine years old, does not speak any Spanish. The psychologist concludes that although Mr. [redacted] does not currently have a diagnosable clinical condition, given his high level of stress, it is likely he will develop psychological symptoms. With respect to the couple's oldest son, [redacted], the psychologist concludes that [redacted] also does not have a diagnosable condition, but that "his behavior has begun to manifest unusual patterns which could jeopardize further his developmental process." The psychologist concludes that [redacted] has an adjustment disorder that merits clinical attention and "is at risk of developing a more chronic and severe behavior problem that may include substance abuse and perhaps antisocial behavior." The psychologist concludes that [redacted] is not manifesting clinical symptoms, but states he should receive ongoing supervision and be properly followed. *Psychological Examination by* [redacted], dated February 20, 2007.

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

The AAO recognizes that has endured hardship since the applicant departed the United States, commuting from Tijuana to work and school in the United States, and is sympathetic to the family's circumstances. However, [redacted] claim that he cannot permanently move back to Mexico, where he was born, because his earning potential is higher in the United States does not rise to the level of extreme hardship based on the record. [redacted] does not contend he cannot find employment in Mexico. Even assuming some financial hardship, 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). To the extent [redacted] contends his youngest child, [redacted] is receiving treatment for an ear infection, and his stepson, [redacted] is receiving treatment for chronic asthma, frequently gets ear infections, and has severe allergies, there is no medical

documentation in the record to substantiate his claim. There is no letter in plain language from any health care professional diagnosing the severity, prognosis, and treatment either child requires. Mr. [redacted] himself does not discuss how [redacted]'s ear infection and [redacted]'s asthma and allergies affect his daily life. In addition, [redacted] does not contend that he requires any assistance due to his children's conditions and he does not contend they cannot be adequately treated in Mexico. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

Moreover, if [redacted] decides to stay 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).

Regarding [redacted] financial hardship claim, although the record contains a copy of the couple's tax return for 2005, indicating the applicant earned $22,086 and [redacted] earned $44,517, there is no evidence addressing the family's monthly expenses, such as rent or mortgage and child care expenses. 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 stated above, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See Jong Ha Wang*, 450 U.S. 139 (1981); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

Regarding the psychological examination, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record is based on a single interview the psychologist conducted with [redacted] and his stepsons on February 14, 2007. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. 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.

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)(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.