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Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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[redacted]

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FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: SEP 21 2009
CDJ 2004 689 089

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

John F. Grissom
Acting 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 27-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 child 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,* dated June 26, 2006. On appeal, the applicant's wife, contends that the denial of the waiver imposes extreme hardship on her and her daughter. *See Form I-290B, Notice of Appeal*, dated July 18, 2006.

The record contains, among other things, a copy of the couple's marriage certificate, indicating that they were married on September 13, 2002, in Phoenix, Arizona; two letters from the applicant's wife; documentation prepared by the Arizona Early Intervention Program relating to the couple's daughter [redacted] a letter and forms from Phoenix Children's Hospital; documentation regarding [redacted] car accident; a letter from a chiropractor; various financial receipts and bank statements; a letter from the applicant's employer; and a job termination warning addressed to [redacted].

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 February, 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 August 7, 2003, and USCIS approved the petition on June 14, 2004. *See Form 1-130, Petition for Alien Relative*. The applicant departed the United States in July, 2005. *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 Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the

[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).

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 27-year-old native and citizen of the United States. *See Birth Certificate for* [redacted] The applicant and his wife have been married for almost seven years. *See Marriage Certificate*. Although there is no birth certificate in the record, it appears that the couple's daughter [redacted] was born in 2003. *See Application for Immigrant Visa (Form DS-230)*. The applicant's spouse asserts that she is suffering emotional, medical, and financial hardships as a result of the separation from her husband.

In support of the hardship claims, the applicant's wife states that the applicant's departure has been very stressful, causing her to lose her hair and not get enough sleep. *See Letter from* [redacted] The record contains documentation regarding the impact of family separation on the applicant's daughter, who has exhibited changed eating and sleeping habits. *See id.; see also Letter from* [redacted] *Developmental Special Instructor Assistant, Family Partners*; *Arizona Early Intervention Program documents.* Although harm to the applicant's child is not calculated in the extreme hardship analysis, *see* 8 U.S.C. § 1182(a)(9)(B), this harm is relevant to the extent that it impacts the applicant's spouse.

The applicant's wife also states that the separation from the applicant has been particularly difficult when she and her daughter suffered medical conditions. For example, when the applicant's wife missed work to stay with the couple's daughter when she was hospitalized for croup in 2005, her employer issued a job termination warning based on her absences from work. *See id; see also Letter from Southwest Foam*, dated Dec. 21, 2005. Additionally, the applicant's wife suffered head and back injuries in a car accident in April, 2006, which made it difficult for her to care for the couple's daughter. *See Letter from* *Accident Report; Letter from Accident Chiropractic + Plus,* dated June 30, 2006.

In addition to the emotional and logistical impact of family separation, the applicant's wife contends that she has suffered extreme financial hardship as a result of the denial of the waiver. For example, the applicant's wife asserts that she had to move out of her apartment, sell her furniture, and move in with her parents after the applicant's departure. *See Letter from* [redacted]

Although the record suggests that the applicant's spouse has encountered a variety of hardships based on family separation, 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. For instance, there is no evidence in the record, such as an ongoing relationship with a mental health professional, or any history of treatment for anxiety or any other significant medical or psychological conditions, to show that the applicant's spouse's emotional hardship is unusual or beyond that which would normally be expected upon removal. *See Perez,* 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Additionally, there is no documentary evidence in the record regarding [redacted] income and expenses to support the claim of extreme financial hardship. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *See Matter of Soffici,* 22 I&N Dec. 158, 165 (Commr. 1998) (requiring supporting documentary evidence in order to meet the burden of proof).

Regarding potential relocation to Mexico, the applicant's wife states that she does not know much about Mexico, and has spent little time there. *See Letter from* [redacted]. Ms. [redacted] also fears that she would not be able to earn enough to support the family, and that her daughter would have inadequate medical care and educational opportunities. *Id.* Additionally, the applicant's wife contends that adopting a "whole new life style" and the inferior living conditions in Mexico would cause extreme hardship. *Id.* Finally, the record suggests that the applicant's wife's parents reside in the United States. *Id.*

Given the applicant's wife's equities in the United States, it appears that relocation to Mexico to live with the applicant could impose hardship. However, the applicant's wife has not provided any documentation to support the claimed hardships. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (setting forth list of relevant hardship considerations). For instance, there is no documentary evidence in the record regarding country conditions in Mexico, the financial consequences of departure, or significant and on-going health conditions that would be severely impacted by relocation. *Id.*; *see also Matter of Soffici, supra.*

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.