identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

H2

[redacted]

SEP 21 2009

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

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 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).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, denied the instant waiver application. 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, the wife of a U.S. citizen, and the beneficiary of an approved Form I-130 petition.

The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The district director also found that the applicant had failed to establish that failure to approve the waiver application would cause extreme hardship to her U.S. citizen spouse, and denied the application.

On appeal, counsel submitted additional evidence and asserted that the evidence shows that failure to approve the waiver application would cause extreme hardship to the applicant's husband. Although counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

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

> Any alien (other than an alien lawfully admitted for permanent residence) who –
>
> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or
> >
> > (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.

The Form I-130, Petition for Alien Relative, which the applicant's husband signed on August 27, 2001, states that the applicant entered the United States without inspection during 2001. On her G-325A, Biographic Information form, the applicant, who signed that form on June 22, 2005, stated that she had lived in Fort Worth, Texas, since 2001. The record contains no indication that the applicant ever acquired any legal status in the United States. In the appeal brief, counsel stated that the applicant entered the United States without inspection during July 2001. On June 16, 2005, the applicant voluntarily departed the United States.

The evidence in the record, coupled with counsel's admission on appeal, is sufficient to show that the applicant was unlawfully present in the United States from July 2001 until June 22, 2005, and that she has since left the United States. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

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

> The Attorney General [now Secretary of Homeland Security] 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 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined 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 set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, 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. The BIA has held:

> 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The record contains a letter, dated April 28, 2006, from the applicant's husband's brother-in-law, who stated that the applicant is staying at the brother-in-law's house. He also stated that the applicant's husband is having a hard time supporting himself in the United States while supporting the applicant in Mexico.

The record contains letters from various friends and acquaintances. Those letters state that the applicant's husband needs the applicant in the United States. They reiterate that the applicant's husband is having trouble supporting himself in the United States and the applicant in Mexico. One of the letters states that the applicant's husband's sister is presently assisting him ". . . with what ever [sic] needs to be done."

The record contains a letter from the applicant's husband, dated February 8, 2006. In it, he stated that he has been alone without anyone to help him since his wife departed the United States.

The record contains a letter, dated June 22, 2005, from the applicant's husband, in Spanish, without the required English translation. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The record contains the 2001, 2002, 2003, 2004, and 2005 joint tax returns of the applicant and her husband and the applicant's husband's corresponding Form W-2 Wage and Tax Statements. Those tax returns and W-2 forms show that the applicant's husband earned $29,314, $29,022, $32,799, $40,684, and $51,986 during those years. The record contains receipts for remittances from the applicant's husband to the applicant, showing that he has been sending her money to support herself in Mexico.

The letter contains a letter from [redacted] an oncologist with offices in Texas. [redacted] stated that the applicant's husband has been diagnosed with polycythemia vera, which is classified as a malignancy although it is chronic in nature. He further stated that the condition is currently being managed with close observation, phlebotomy, and drugs. Further still, he stated that leukemia can develop in ten to twenty percent of patients with the disease, and that bone marrow failure syndrome can also develop. Finally, [redacted] noted that patients with the disease in its advanced stages may require significant help, but notes that the applicant's husband currently has a reasonably functional status and is actually employed.

The record contains a letter, dated May 13, 2006, from the applicant, who stated that her husband's condition causes his blood level to reproduce very fast, by which she apparently means that the level of white blood cells, red blood cells, and platelets in his blood is higher than it should be. She stated that this condition necessitates that he have blood drawn every three months, after which he becomes

dizzy and disoriented for almost two hours. She stated that she is afraid that he might hurt himself and that he really needs her.

In a letter dated May 26, 2006, the applicant's husband stated, ". . . another reason I need to have [the applicant] here is because I am under a docters [sic] care for my leukemia [sic] and she is the one that takes care of my because I get real [sic] sick every time I go see the docter [sic] and they draw blood[.]"

In a brief filed to supplement the appeal counsel stated that, in addition to the hardship typical to separation, the applicant's husband has a serious chronic blood disorder and that he suffers from the applicant's absence for that additional reason. Counsel noted that the applicant's husband stated that he becomes very sick after each phlebotomy, and that the applicant characterized her husband as dizzy and disoriented after his blood is drawn and stated that she worries that he will hurt himself. Counsel noted that the doctor indicated that the applicant's husband may require additional assistance in the future, and that the applicant's husband is at an increased risk of developing leukemia or bone marrow failure.

Although counsel is correct as to the characterizations of the applicant's husband's condition by the applicant and her husband, the only other evidence in the record pertinent to his prognosis is the oncologist's letter, and it does not support their assertions.

[redacted] did not state that the applicant's husband has leukemia, but that he has polycythemia vera. He did not characterize the condition as serious. He indicated that the disease is presently managed by observation, periodic blood-letting, and appropriate drugs. He did not indicate that the applicant's husband is in danger after his blood is drawn. He indicated that the disease can result in leukemia, but only in one out of every five or ten patients. He stated that the disease might result in bone marrow failure, but did not imply that result is imminent or give any estimate of the probability of that result. He did not state that the applicant's husband currently requires assistance. He observed that the applicant's husband is currently employed and reasonably functional. No evidence supports the assertions of the applicant and her husband that he requires assistance.

Further, the applicant has stated that her husband becomes dizzy and disoriented and that the condition persists for less than two hours after his blood is drawn, which procedure she stated is performed once every three months. Even if the record supported the assertion that he becomes dizzy and disoriented after phlebotomy, it would still contain insufficient evidence to demonstrate that this minor inconvenience cannot feasibly be managed except by the applicant's returning to the United States. Further, letters in the record state that the applicant's husband lives with his brother-in-law and that the applicant's husband's sister has been assisting him. The evidence is insufficient to show that neither she nor some other family member is available to assist him for somewhat less than two hours every three months to prevent the injury the applicant claims to fear.

The record contains insufficient evidence to demonstrate that, if the applicant's waiver application is not approved, her husband is likely, as a consequence, to suffer medical hardship which, when

considered together with the other hardship factors in this case, rises to the level of extreme hardship.

The record demonstrates that the applicant's husband has been supporting her in Mexico. The record contains tax returns showing the amounts the applicant's husband earned during the years from 2001 to 2005. The record does not, however, contain a list of the applicant's husband's recurring expenses. Although supporting a relative in a household elsewhere necessarily represents some degree of hardship, the AAO is unable, without evidence, to find that the hardship of supporting the applicant in Mexico is resulting or will result in hardship to her husband which, when considered together with the other hardship factors in this case, rise to the level of extreme hardship.

Another consideration is the emotional hardship that will result to the applicant's husband in the event she is not permitted to return from Mexico. Although separation from one's spouse necessarily results in some degree of hardship, the record contains no evidence that the separation of the instant applicant from her spouse will result in more hardship to him than it would cause in a typical case, and the record contains no evidence that suggests that this separation will cause the applicant's husband hardship which, when considered together with the other hardship factors in this case, will rise to the level of extreme hardship.

Another possibility is the return of the applicant's husband to Mexico. Counsel, in the brief submitted on appeal, stated, ". . . it would be impossible for the [applicant's husband] to relocate to Mexico because of the lack of jobs and adequate medical care in the country," and "[i]f he joined his wife in Mexico, he would not be able to meet their family's most basic needs," and "It would be impossible for the [applicant's husband] to join the [applicant] in Mexico and find employment that would allow him to continue the ongoing treatment required by his condition." However, counsel provided no evidence to support the implication that the applicant's husband would be unable to obtain suitable employment in Mexico, no evidence that he would be unable to afford medical treatment in Mexico with the wages he would earn there, and no evidence that the medical care available in Mexico is insufficient to treat the applicant's husband's disease. Absent any such evidence, the AAO cannot find that the evidence in the record demonstrates that to return to Mexico to live with his wife would cause the applicant's husband hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship

to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *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); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. ***See INS v. Jong Ha Wang*, 450 U.S. 139 (1981)** (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.