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U.S. Citizenship and Immigration Services

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FILE: [redacted] (CDJ 1996 522 230) Office: MEXICO CITY (CIUDAD JUAREZ) Date: JAN 21 2010

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 ALLPLICANT:

[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, 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who resided in the United States from March 1994, when she entered the country without inspection, to September 2001, when she returned to Mexico. She was found to be inadmissible to the United States under 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 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 accordingly. *See Decision of the District Director* dated December 29, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband would suffer extreme hardship if he relocated to Mexico because he has resided in the United States since 1979, and after spending most of his adult life outside of Mexico would have difficulty readjusting to life in Mexico, and he would be separated from his family members in the United States. *See Brief in Support of Appeal* at 4-5. Counsel further states that the applicant's husband has no ties to Mexico and would have difficulty finding employment there due to his lack of education and economic conditions in Mexico. *Brief* at 5-6. Counsel additionally asserts that the applicant's husband is suffering financial hardship because he does not earn enough to support two households and emotional hardship due to separation from his wife and children, concern for their safety in Mexico, and the effects of relocating to Mexico on the applicant's children. *Brief* at 6-8. In support of the appeal counsel submitted copies of birth certificates for the applicant's children, copies of pay stubs and a letter from the applicant's husband's employer, affidavits from friends and family members, documentation related to payments made on and the repossession of the applicant's husband's mobile home, affidavits from individuals in Mexico concerning employment opportunities there, information on conditions in Mexico, and an affidavit from the applicant's husband. The entire record was reviewed and considered in arriving at 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.

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.

In the present case, the record reflects that the applicant is a thirty-two year-old native and citizen of Mexico who resided in the United States from March 1994, when she entered the country without inspection, to September 2001, when she returned to Mexico. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of one year or more. The applicant's husband is a forty-seven year-old native of Mexico and citizen of the United States. The applicant currently resides in Mexico with their three children and her husband resides in Colorado.

Counsel asserts that the applicant's husband would suffer extreme hardship if he relocated to Mexico because he has lived in the United States for thirty years, would be separated from his siblings and nieces and nephews in the United States, and would have difficulty finding employment and readjusting to conditions in Mexico. In support of these assertions counsel submitted affidavits from several relatives who reside in the United States and also submitted documentation on conditions in Mexico, including a U.S. State Department Report on Human Rights Practices in Mexico, which states that the minimum wage in Mexico did not provide a decent standard of living and only a small fraction of workers receive the minimum wage. Counsel also submitted a letter from the applicant's husband's employer stating that he has worked there since 2005 and earns $14.41 per hour as a order selector at a food company.

The applicant's husband has resided his entire adult life in the United States and he has extensive family ties in Colorado, including a brother with whom he resides. He has steady employment and no apparent ties to Mexico. It appears that in light of his length of residence and ties to the United States and poor economic conditions in Mexico, he would suffer emotional and financial hardship if he relocated there to reside with the applicant.

The applicant's husband states that he is suffering emotional hardship due to separation from the applicant and their children and further states,

> I spend my time sad just thinking about my kids. . . [I]t hurts when they tell me that there are problems, but I can't help them because thy are so far away. I just spend my time being sad, not wanting to talk with anyone. . . .*Affidavit of* [redacted]

The applicant's husband states that he is suffering emotional hardship due to separation from the applicant and worry about the safety of his wife and children in Mexico. No evidence concerning his mental health or the potential psychological effects of the separation was submitted, and the evidence on the record is insufficient to establish that any emotional difficulties he is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's exclusion or removal. Although the depth of his distress caused by separation from his wife is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant's husband states that having to support two households is causing him financial hardship because he barely makes enough money to support himself and his family in Mexico. In support of these assertion counsel submitted payment records for a mobile home purchased by the applicant's husband and documentation indicating it was repossessed in 2006. The record does not indicate why the applicant's husband stopped making payments in late 2005, four years after the applicant had departed the United States, and no documentation of the family's living expenses or evidence that the applicant was ever employed in the United States was submitted. The record is insufficient to establish that the applicant's husband is suffering financial hardship as a result of the

applicant's departure from the United States. Further, the record does not establish that there are any ongoing unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of separation from the applicant. Any financial impact of maintaining two households therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The evidence on the record is insufficient to establish that any emotional or financial hardship the applicant's husband is experiencing is other than the type of hardship that a family member would normally suffer as a result of deportation or exclusion. 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 any 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.