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Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: JAN 22 2010
CDJ 2005 834 276

IN RE: [redacted]

APPLICATION: Application for Waiver of Ground 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).

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 record reflects that the applicant is a 37-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 she 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 her husband and children in the United States.

The District Director found that the applicant failed to establish extreme hardship to her spouse, and denied the application accordingly. *Decision of the District Director*, dated Dec. 17, 2006. On appeal, the applicant contends through counsel that the denial of the waiver imposes extreme hardship on her husband and children. *See Form I-290B, Notice of Appeal*, dated Jan. 3, 2007.

The record contains, among other things, a copy of the couple's marriage certificate; an affidavit from the applicant's husband discussing the hardships imposed on him as a result of the denial of the waiver; several articles discussing employment discrimination in Mexico; tax records; a letter from the applicant's husband's employer; birth certificates for the applicant's two children; letters from the applicant's children's teachers; and family photographs. The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(9) 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

> [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 shows that the applicant entered the United States without being inspected and admitted in or around November, 1994. *See Form I-601, Application for Waiver of Ground of Excludability,* filed Feb. 22, 2006. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on her behalf, which U.S. Citizenship and Immigration Services (USCIS) approved on March 23, 2004. *See Form 1-797, Approval Notice.* The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on June 22, 2004, which USCIS denied on September 29, 2005. *See Decision of the Acting District Director*, dated Sept. 29, 2005. The applicant departed the United States in February, 2006. The applicant accrued unlawful presence during the period from April 1, 1997, to June 21, 2004, when she did not have a pending application for adjustment of status.[1]

In order to obtain a section 212(a)(9)(B)(v) waiver for unlawful presence, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Under the plain language of the statute, 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.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). 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) (en banc).

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. at 565. 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 565-66. Family separation is also an important calculation in the extreme hardship

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[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).

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 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 *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.[2]

The record reflects that the applicant's spouse, [redacted], is a 63-year-old native of Mexico and citizen of the United States. *See Certificate of Naturalization for* [redacted] dated May 10, 1999. The couple has been married for seven years. *See Marriage Certificate*, indicating marriage in Florida on May 29, 2002. The applicant has two minor children from a previous relationship. *See Birth Certificates for* [redacted] *and* [redacted]

[redacted] contends that relocation to Mexico would cause him extreme hardship. [redacted] states that he has resided in the United States since the 1970s, and he has been employed as an agricultural worker since January, 1980. *See Affidavit of* [redacted] dated Feb. 28, 2006.

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[2] The director erred in citing to *Matter of Tin*, 14 I&N Dec. 371 (Reg. Commr. 1973) and *Matter of Lee*, 17 I&N Dec. 275 (Commr. 1978), because these decisions discuss the factors relevant to consent to reapply for admission after deportation from the United States, which are not applicable to this case. Because the AAO is dismissing this appeal after a de novo review, *see* 5 U.S.C. § 557(b), this error is harmless.

Given his advanced age and lack of professional or specialized skills, [redacted] claims that it would be difficult for him to obtain employment in Mexico to support his wife and two stepchildren. *Id.* In support of this allegation, the record contains country conditions information discussing the problem of employment discrimination in Mexico. *See Articles, supra.* Further, [redacted] states that he has developed a very close and loving relationship with his U.S. citizen stepchildren. *See Affidavit of* [redacted] *supra.* If he relocated to Mexico, the children might remain in the United States with their birth father, and the separation would cause emotional suffering to [redacted] the applicant, and to the children. *See id.* Alternatively, if the children relocated to Mexico, they would suffer from educational disruption, and they would be denied visitation with, and support from, their birth father. *See id.* Additionally, [redacted] indicates that apart from the applicant, he has no family ties in Mexico, and he does not have a residence there. *See id.* Finally, [redacted] states that his "life's roots have grown deep into the U.S., and [he does] not believe, at [his] age of 60 years, that [he] can adjust to the standard of living and other conditions that [he] will have [to] endure in Mexico." *Id.*

Here, the evidence in the record is sufficient to support the applicant's claim that her husband would suffer extreme hardship if he relocated to Mexico. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 566 (noting relevance of 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 the financial impact of departure). Given [redacted] age and lack of employment opportunities in Mexico, as well as his long residence and work history in the United States, departure would cause hardships beyond what would be expected upon relocation to one's homeland.

[redacted] also contends that family separation would cause extreme hardship. Specifically, [redacted] states that he loves his wife very much, and that he is "suffering from depression and sadness while she is in Mexico." *Affidavit of* [redacted], *supra.* Further, he does not believe that he will "be able to function nor live . . . without depression should [he] be separated from [his] wife for any extended period of time." *Id.* Additionally, [redacted] states that his stepchildren "are currently having significant difficulty at home and in school because of the current separation from [the applicant]." *Id.*; *see also Letter from PreKindergarten Early Intervention Program* (stating that [redacted] became very sad and clingy after his mother returned to Mexico); *Letter from St. Peter's Academy* (stating that [redacted] began displaying signs of anxiety after separation from her mother). Further, if the children reside with their birth father in the United States, [redacted] the applicant, and the children would suffer as a result of the separation of the family. *Affidavit of* [redacted], *supra.*

Although the record shows that separation from the applicant has caused various hardships to the applicant's husband, the evidence in the record is not sufficient to demonstrate that the hardships are extreme. First, while the emotional hardship of separation is apparent from [redacted] affidavit, the applicant did not provide medical records, probative testimony, or other evidence to show that the psychological hardships faced by [redacted] are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Second, any hardships faced by the applicant and her children as a result of family separation, are not calculated in the extreme hardship

analysis, except to the extent that these hardships impact [redacted] *See* 8 U.S.C. § 1182(a)(9)(B)(v) (excluding consideration of hardship to the applicant, or to his or her children or other family members). While [redacted] indicates that he is impacted by the emotional and educational difficulties facing his stepchildren, the evidence in the record does not indicate that the impact on [redacted] renders his hardship extreme. In sum, although the applicant claims that her spouse would suffer extreme hardship based on family separation, the record does not support a finding that the difficulties, 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 her spouse, as required under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.