U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

H3

[redacted]

FILE: [redacted] Office: CHICAGO Date: OCT 11 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The district director, Chicago, IL denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on a motion to reconsider after a July 23, 2003 AAO decision to dismiss the appeal. The motion will be granted. The previous decisions will be affirmed and the application denied.

The applicant, [redacted], is a native and citizen of Mexico who entered the United States without inspection on or about July 1, 1993, and filed an application for waiver of ground of inadmissibility (Form I-601) on April 3, 2002. In order to remain in the United States with his U.S. citizen wife, [redacted] and their U.S. citizen child, the applicant seeks a waiver 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), for being unlawfully present for more than one year, departing the United States, and then seeking admission.

[redacted] first entered the United States in 1995. In December 1998, he and [redacted] traveled to Mexico to get married. He re-entered the United States, without inspection, in February 1999.

The district director determined that the applicant is inadmissible under § 212(a)(9)(B)(i)(II) for being unlawfully present for more than one year, departing the United States, and seeking admission within 10 years of his departure. The district director also concluded that the applicant had failed to establish that extreme hardship would be imposed on his qualifying relative, his wife, and denied the Form I-601. *Id.* In a July 23, 2003 decision, the AAO affirmed the district director's decision.

A review of this case arises from a motion to reconsider filed by counsel on August 21, 2003.

On motion, counsel submits a brief and a supplemental statement from [redacted] Counsel asserts that the AAO must follow *Matter of Anderson*, 16 I & N Dec. 596 (BIA 1978) and that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) limited who could ask for a waiver, but it did not change the standard under which the waiver should be analyzed. Counsel further asserts that the AAO only focused on the financial factors that would affect [redacted] if her husband's waiver application was denied and that the AAO is obligated to consider all factors in the aggregate, including the loss of the [redacted] home if [redacted] leaves and [redacted] stays in the United States. Finally, counsel asserts that [redacted] was unaware that her husband would be inadmissible based on his unlawful presence and that the AAO erred in presuming that she had been aware of it. The AAO thoroughly reviewed all of the affidavits and the documents in the record.

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 sets forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

Counsel asserts that that [redacted] would suffer extreme hardship because she would be unable to pay the mortgage on the couple's house if [redacted] were compelled to go live in Mexico. The BIA has generally not found financial hardship alone to amount to extreme hardship. *Matter of Cervantes-Gonzalez, supra,* at 568 (citations omitted). Counsel asserts that, taken together, the financial hardship [redacted] would suffer, together with the emotional hardship she would experience, would amount to extreme hardship. The AAO recognizes that [redacted] was born and raised in the United States, has significant family ties in the United States, and has hardly any family ties in Mexico, except for her in-laws. If [redacted] chose to relocate with her husband to Mexico, she would be separated from her parents and extended family, and would lose the support network and friendships she has always enjoyed. [redacted] has not shown, however, that his wife would suffer extreme hardship if she remains in the United States, together with those who make up her extended support network, separated from him. [redacted] statement indicates that she has a strong attachment to her husband and that she wants her husband to help support and raise their children. In addition, counsel asserts, [redacted]'s standard of living would be diminished and she and her children might have to sell their home. Unfortunately, these hardships are not unusual or beyond that which would normally be expected upon a finding of inadmissibility. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996). In addition, there is no objective evidence in the record to supplement [redacted]'s claim of extreme psychological hardship were her husband's inadmissibility waiver denied. Based on the existing record, the effect of separation from [redacted] on [redacted], while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning 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 [redacted] faces extreme hardship if [redacted] is refused admission and she chooses to remain in the United States. U.S. court decisions have repeatedly 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) (upholding the BIA's decision in a case which addressed, *inter alia,* claims of emotional and financial hardship that [redacted] deportation would cause to his spouse and children). *Hassan v. INS* held further, "while the claim of emotional hardship was 'relevant and sympathetic . . . it is not conclusive of extreme hardship, and is not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.'" *Hassan v. INS, supra,* at 468.

The AAO recognizes that [redacted] will endure hardship as a result of separation from her husband. In this case, the record does not contain sufficient evidence to show that the hardship she faces rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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 rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

Here, the applicant has not met that burden. Accordingly, the previous decisions are affirmed and the application denied.

ORDER: The motion is granted. The previous decisions are affirmed and the application denied.