U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: DEC 13 2007

IN RE: Applicant: [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:

SELF-REPRESENTED

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Phoenix, Arizona, 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, pursuant to the record, provided sworn testimony at his I-485, Adjustment of Status interview on December 3, 2003, admitting that he had entered the United States without inspection in 1991 and had remained until 2000, when he voluntarily departed the United States. The applicant subsequently re-entered the United States without inspection in May 2000. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until his departure in 2000. The applicant was thus 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 seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

Moreover, the acting district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Acting District Director,* dated January 3, 2006.

In support of the appeal, the applicant has provided the following documents: a letter from the applicant's spouse, dated January 17, 2006 and a letter from the applicant's spouse's psychiatrist, dated February 6, 2006. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) 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 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…

A waiver of the bar to admission under section 212(a)(9)(B)(i)(II) of the Act resulting from a violation of section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Extreme hardship to the applicant himself is not a permissible consideration under the statute. In the present case, the applicant's spouse, married to the applicant since February 2001, is the only qualifying relative, and any hardship to the applicant or their children cannot be considered, except as it may affect the applicant's spouse. 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).

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). 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 *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of removal are insufficient to prove extreme hardship. The United States Supreme Court additionally 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.

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 list of non-exclusive 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 held in *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

> 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.

The applicant's spouse asserts that she will suffer extreme emotional and psychological hardship were the applicant removed from the United States. As stated by the applicant's spouse,

> Right now I am going through a very extreme hardship. I'm under a Psychologist care...She has put me on medication for my depression and for my anxiety. These decisions are really affecting my health...

> In July 2004, I had my first anxiety attack at work…I was sent to my primary doctor and was told that I had had an anxiety attack. I was taken off work for two weeks and put on Zoloft and anxiety mediation. As the months passed my depression got worse and worse each day. The thought of losing my husband is driving me insane…
>
> On September my supervisor suggested that I really needed to get help. That I didn't look like I was getting any better and that I sounded awful. I started seeing the Psychologist [redacted] for a couple of weeks then referred me to Psychiatrist [redacted] ..My diagnosis with him was I have a Major Depressive Disorder and recurrent and severe Panic Disorder. He took me out of work put me on Short Term Disability for 6 months. I was put on medication and under his care all this time.
>
> …My doctor told me that I was not going to be released to go back to this job since it was not going to help me in my health. I had to quit this job which I loved and got paid very good.
>
> …On January 3, 2006, my world completely changed again…I received the denial of both forms that I had filed. Now I'm sad every day, I can't concentrate on my work, I feel stressed out, anxious and I'm very moody…I have fallen into depression once more…

Letter from [redacted] dated January 17, 2006.

In support of the applicant's spouse's statements, the applicant's spouse has provided a letter from [redacted] Cactus Psychiatric Services. [redacted] confirms that the applicant's spouse "…is currently under my care for depression and anxiety. Her treatment with me consists of medication management. [redacted] has been off medication for a period of time but has had to restart medications due to significant stress surrounding her husband's legal status in the United States…" *Letter from* [redacted], *Cactus Psychiatric Services,* dated February 6, 2006.

Moreover, the record indicates extensive evidence of the applicant's spouse's absences from her employment under short-term disability and medical work sheets from physicians who have treated her in the past for her mental conditions, namely depression and anxiety, confirming the diagnoses referenced in the letters referenced above.

Based on a thorough review of the record, The AAO has determined that extreme hardship would exist were the applicant's spouse to remain in the United States while the applicant relocates abroad due to a denial of his waiver request. Given the applicant's spouse's medical situation and the precarious nature of her employment due to her mental status, it would not be feasible for her to lose the emotional, financial and psychological support of the applicant; this forced separation would be deemed extreme hardship.

However, the AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why the applicant's spouse is unable to relocate to Mexico, or any other country of their choosing.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were he removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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 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.