U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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JUL 2 7 2007

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date:
(CDJ 2002 663 240 relates)

IN RE: [redacted]

PETITION: 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 PETITIONER:

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 Officer-in-Charge (OIC), Ciudad Juarez, Mexico, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Mexico, was found 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 in the United States for more than one year. The applicant is the spouse of a United States citizen and 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 join her husband and family.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that her husband would suffer extreme hardship if she is required to remain in Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (B) Aliens Unlawfully Present.-
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> (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 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.

Regarding the applicant's grounds of inadmissibility, the record reflects that she entered the United States, without inspection, in April 1999, and did not depart until March 2005. The applicant is now seeking admission within ten years of her March 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully

present in the United States for a period of more than one year. The applicant does not contest the director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

The record contains many references to the hardship that the applicant's daughter would suffer if the applicant were refused admission into the United States. However, section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant or the couple's daughter will face cannot be considered, except as it may affect the applicant's husband.

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). 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 deportation 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 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. 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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant's husband is a forty-one-year-old citizen of the United States. He and the applicant have been married since April 30, 2001 and have a United States citizen daughter. The applicant's husband also has a daughter from his first marriage.

The record contains two undated letters from the applicant's husband. In his first letter, he states that he needs the applicant home to care for the family; that his insurance will not pay for doctors in Mexico; and that he misses his wife.

In his second letter, the applicant's husband states that separation from his wife and daughter is causing extreme hardship; that he feels his world is broken; that the couple's daughter is sick and has developed allergies in Mexico; that he is beginning to make mistakes at work, and that his boss has told him that he will be fired if he makes another mistake; that he is losing everything he loves most; that the couple's daughter is sick every day; that his daughter must travel forty-five minutes in order to go to school; that he has diabetes and separation from his wife has worsened his condition; and that the couple's United States citizen daughter cannot live in the United States without her mother because he cannot take care of her alone.

On appeal, the applicant's husband states that he does not understand why the waiver application was denied; that he has sent proof that he is sick; that his diabetic condition has worsened as a result of separation; that his daughter is sick in Mexico; and that he has lost his job as a result of his diabetic condition and his travels to Mexico to see the applicant and their daughter.

The record also contains a letter from [redacted] dated April 8, 2006. [redacted] states that the applicant's husband has a history of diabetes, and that there is "a consideration for arterial hypertension." [redacted] states that the applicant's husband's medical condition has been "apparently" exacerbated by the family's immigration troubles. [redacted] also states that "[a]pparently, the distance from his family has been a major issue in his emotional status." [redacted] goes on to state that if the applicant and the couple's daughter were present, the applicant's husband's "emotional situation" would be resolved.

The record also contains a pharmacy printout with the medications that the applicant's husband has taken, as well as records from his daughter's physician in Mexico.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In the instant case, the applicant is required to demonstrate that her husband would face extreme hardship in the event the applicant is required to remain in Mexico, regardless of whether her husband joins her in Mexico or remains in the United States.

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 will face extreme hardship if the applicant is refused admission. Particularly if he remains in the United States, the record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to his situation, the financial strain of visiting the applicant in Mexico and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law.

The emotional distress the applicant's husband is experiencing is common in cases of spousal separation and to be expected. Although the AAO notes that he is diabetic, the applicant's husband has not demonstrated that this medical condition is causing him to suffer harm greater than that normally expected upon separation from a spouse. [redacted]etter does not establish extreme hardship either, as he does not state how separation from the applicant is exacerbating her husband's diabetes; he simply states that it is "apparently" exacerbating it.

Moreover, the AAO notes that the applicant's husband only began seeing [redacted]on February 1, 2006, which is a date subsequent to the denial of the waiver application. While [redacted]states that the applicant's husband appears "markedly depressed," the record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or any history of treatment for his depression. The conclusions reached by [redacted]do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby diminishing his letter's value to a determination of extreme hardship.

Nor has the applicant established that he would face extreme hardship if he joined the applicant in Mexico, as the record fails to demonstrate that he would face hardship beyond that normally faced by others in his situation if he were to relocate with the applicant. As to his anxiety stemming from the state of his daughter's health in Mexico, the AAO notes that, as a United States citizen, the couple's daughter is not required to live in Mexico and is eligible to return to the United States immediately.[1]

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 finds that the OIC properly denied this waiver application. In adjudicating this appeal, the AAO finds that the record fails to

[1] Moreover, the AAO notes that none of the documents submitted regarding the couple's daughter's health were accompanied by English translations. Accordingly, the evidence is not probative and will be accorded no weight in this proceeding. *See* 8 C.F.R. § 103.2(b)(3).

demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon the removal or refusal of entry of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that her United States citizen husband would suffer hardship that is unusual or beyond that normally expected upon removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. 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), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.