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

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U.S. Citizenship and Immigration Services

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MAY 02 2007

FILE: [redacted] Office: CUIDAD JUAREZ Date:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant, [redacted] is a 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's husband, [redacted] is a citizen of the United States. She sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which the OIC denied.

The applicant submitted a timely Form I-290B on October 26, 2005 and indicated that a brief and/or additional evidence would be submitted to the AAO within 35 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record as constituted is complete.

The AAO will first address the OIC's finding that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of 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.

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.
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> . . .
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> (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.
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> . . .

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). Exceptions and tolling for good cause are set forth in sections 212(a)(9)(B)(iii) and (iv) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii) and (iv), respectively. The periods of unlawful presence under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(II), are not counted in the aggregate. Each period of unlawful presence in the United States is counted separately

for purposes of section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(II).[1] For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.[2] The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. DOS Cable, *supra. See also Matter of Rodarte,* 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The record reflects that the applicant was unlawfully present in the United States for more than one year. She entered the United States without inspection in 1999 and began accruing unlawful presence as of the date of her arrival. She voluntarily departed from the United States in April 2005, triggering the ten-year bar. *April 6, 2005 letter from the American Consulate General, Cuidad Juarez, Mexico.*

The OIC found that the applicant did not merit a waiver of inadmissibility. He described the extreme hardship factors that must be present in order to waive inadmissibility for unlawful presence and found that the submitted letters from the applicant's husband failed to establish extreme hardship to him if his wife's waiver of inadmissibility was denied.

The AAO will now address the OIC's finding that a waiver of inadmissibility is not warranted in the present case.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and her children are not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative, which in this case is the applicant's husband. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 564 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include 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

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[1] Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

[2] DOS Cable, supra.; and IIRIRA Wire #26, HQIRT 50/5.12.

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. *Id.* at 564. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

The AAO will now apply the *Cervantes-Gonzalez* factors in its consideration of hardship to the applicant's wife. Extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The September 2, 2005 letter from [redacted] states the following. He has had a very hard time the last few months. He has had inconveniences. His family has been out of control. Taking his daughters to doctor and dental appointments caused him to miss one or two days of work. He has had to wait in long lines. His eldest daughter should have started pre-kindergarten, but must wait. He can barely make it to work each day. If he had been in El Paso, he would have his family help pay bills, the mortgage, etc. Having two places has been extremely expensive because he must pay bills for two places. All of these things have impacted his way of living. He needs to get his life back together. He never lived in Mexico and he cannot adjust himself to living in such a dangerous city.

In the April 6, 2005 letter, [redacted] states that he needs his wife at home. His two daughters are very attached to their mother. His wife needs to take his daughters to dental and medical appointments. He misses his wife's love and cooking. As a fellowship teacher, his wife does things for the church.

U. S. courts have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that the applicant has U.S. citizen children is not sufficient in itself to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per

curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), 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.

The record is insufficient to establish that the applicant's husband would endure extreme hardship if he joined his wife in Mexico.

The conditions of Mexico, the country to which the [redacted] family will live, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted). Even a significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS,* 794 F.2d 491 (9th Cir. 1986).

Economic hardship claims of not finding employment in Mexico do not reach the level of extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985). In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship."

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" [redacted] claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang,* 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa,* 644 F.2d at 1356-57."

[redacted] does not claim economic hardship stemming from an inability to find work in Mexico. His claim of hardship relates to the expense of maintaining two households. It is noted that the record contains no evidence, such as household expenses and wage statements, to show that [redacted] is not able to financially support his family in Mexico. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Furthermore, U.S. courts have universally held that economic detriment alone is insufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang,* 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS,* 656 F.2d

520, 522 (9th Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider) (citations omitted).

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are a hardship consideration. However, "second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). Economic hardship claims of not having proper medical care benefits do not reach the level of extreme hardship. *Marquez-Medina v. INS*, *supra*. It is noted that the record does not reveal that a member of the Jimenez family has a significant health condition.

Hardship to the applicant's children is not a consideration under section 212(a)(9)(B)(v) of the Act. However, the hardship endured by the applicant's husband, as a result of his concern about the well-being of his daughters, is a relevant consideration. In *Ramirez-Durazo, supra* at 498, the Ninth Circuit stated that "[t]he disadvantage of reduced educational opportunities for the children was also considered by the BIA and found insufficient to establish "extreme hardship." It also stated that "[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute "extreme hardship." In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit states that "[w]hile changing schools and the language of instruction will admittedly be difficult, [redacted] herself admitted that [redacted] would be able to learn the German language. The possibility of inconvenience to the citizen child is not itself sufficient to constitute extreme hardship under the statute."

There is no evidence that the [redacted] daughters will not be able to transition to life in Mexico. [redacted] has two daughters and he states that his eldest daughter is still of pre-school age. In light of their age, the AAO finds that his daughters are less susceptible to the disruption of education and change of language involved in moving to Mexico.

[redacted] states that he has never been to Mexico before; however, he does not describe his family ties to the United States. Regardless of this, as previously stated, *Hassan, supra,* indicates that separation from family is not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). The holding in *Perez, supra,* is 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. Thus, [redacted]s severance of family ties and friendships in the United States does not in itself constitute extreme hardship.

The record does not indicate that [redacted] would endure extreme hardship if he were to remain in the United States without his wife.

[redacted] has not shown that he is unable to financially support his wife in Mexico. As previously stated, the record contains no evidence, such as household expenses and wage statements, to support such a hardship claim. Moreover, in *INS v. Jong Ha Wang, supra,* the Supreme Court upheld the BIA finding that economic detriment alone is insufficient to establish extreme hardship.

The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. It has taken into consideration the statements of [redacted] However, the AAO finds that [redacted]'s situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. *See*, *Perez v. INS, supra*, in which the Ninth Circuit 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. The record before the AAO is insufficient to show that the emotional hardship that will be endured by [redacted], while separated from his wife of four years, is unusual or beyond that which is normally to be expected upon deportation. In *Hassan v. INS, supra*, the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission."

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.