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

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[redacted]

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date: APR 0 8 2008

(CDJ 2004 640 012 relates)

IN RE: [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 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 rejoin his wife.

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 his wife would suffer extreme hardship if he 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.
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> . . .
>
> (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 ground of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), the record establishes that the applicant entered the United States, without inspection, on or around March 21, 1995. He did not depart the United States until April 2005. The OIC found the applicant inadmissible based upon the period of time he was unlawfully present in the United

States between April 1, 1997 (the date the unlawful presence provisions of the Act were enacted) and his April 2005 return to Mexico. As he had resided unlawfully in the United States for more than one year and then sought admission within ten years of his last departure, the OIC correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest the director's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

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. Extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's wife is the only qualifying relative.

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 applicant's wife is a thirty-seven-year-old citizen of the United States. She and the applicant have been married since July 1, 2002.

In her April 11, 2005 letter, the applicant's wife states that she cannot pay her bills while the applicant is in Mexico; that she receives social security benefits due to her illness; that she has no income without the applicant; that she is sick and will have surgery the following month (May 2005); that she will not be able to get her medication if the applicant is not present; that she has no family members who can help her; that she will be homeless again if the applicant is not allowed to return to the United States; that she has depression and takes many medications; and that she loves her husband and needs him in the United States.

In his August 25, 2005 letter to the applicant, the OIC requested a letter from the applicant's wife's doctor explaining her medical condition and approximate date that her surgery would occur, as well as proof of her social security benefits.

In response, the applicant submitted a letter from his wife stating that she was no longer receiving social security benefits because she was in Mexico, and an untranslated letter from a Mexican doctor that, according to the OIC, stated that the applicant's wife was a healthy woman and did not require surgery. Accordingly, the OIC denied the waiver application.

On appeal, the applicant's wife submits a new letter and a copy of a check from the Social Security Administration, dated January 3, 2006, as evidence that her social security benefits have been reinstated now that she is back in the United States. In her letter, the applicant's wife states that she needs the applicant with her in the United States; that she is going through a difficult time because she needs the applicant by her side; that she has many medical problems; that she takes two medications to control her asthma; that she takes two medications to control her depression; that she takes medication to control her "otoraires" and "tentenaires"; that she takes medication to control her acid reflux disease; that she takes medication to treat a cyst on her ovary; that she takes medication to control her "tarroy"; that she takes medication to control her migraine headaches; that she takes medication to treat a hole in her spine caused by having spina bifida at birth; provided the names of the four physicians who treat her; that she has had trouble with both of her knees and cannot stand for long periods of time and must now use crutches to walk; that she has four screws in her right knee and one screw and one block in her left knee; that she needs therapy for her knees but cannot afford it; that it is very hard to support herself without the applicant's income; that her social security and Medicare benefits do not cover the costs of all of her medicines; that she has trouble paying her utility bills; that the years during which she has been married to the applicant have been the best of her life; that the applicant is a hard worker; that the applicant has supported her through two surgeries; that the applicant is her financial support; that she was unhappy before she met the applicant; that she was sometimes homeless and without food before she met the applicant; that her medical coverage does not apply in Mexico; that she cannot work due to her knees; and that the money she and the applicant had saved is gone because they had to stay in Mexico for so long (for the applicant's waiver permanent residency interview in Ciudad Juarez).

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).

In the instant case, the applicant is required to demonstrate that his wife would face extreme hardship in the event the applicant is required to remain in Mexico, regardless of whether she joins him in Mexico or remains in Kentucky without him. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

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 wife will face extreme hardship if the applicant is refused admission. The record does not demonstrate that she faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. The record, as currently constituted, contains no evidence to document any of the claims made by the applicant's wife. Simply going on record without supporting documentary evidence is not sufficient for purposes 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)). It is insufficient for the applicant's wife to simply provide the AAO with the names of her doctors and their contact information, as the AAO is not in a position to contact any of these individuals. Without letters from her doctors describing her medical conditions and evidence that she is actually taking any of the medications she claims to be taking (such as copies of prescription labels), the AAO cannot ascertain whether or not she is actually suffering from any of the medical conditions she claims, how her medical conditions are affecting her daily life, or how the presence of her husband would help. Although CIS is not insensitive to her situation, the record as it currently stands does not establish that the hardship the applicant's wife would experience if the waiver were denied rises to the level of "extreme" as contemplated by statute and case law.

Nor does the record, as currently constituted, establish that she cannot join the applicant in Mexico. Again, the record contains no evidence to document any of the claims made by the applicant's wife. Nor is there any evidence demonstrating that she would be unable to receive treatment for any of her claimed medical conditions in Mexico. Again, going on record without supporting documentary evidence is not sufficient for purposes 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)).

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his United States citizen wife would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or 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.