U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUN 17 2008

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:

[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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California and an appeal to the Administrative Appeals Office (AAO) was rejected as untimely. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted and the appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be 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)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant initially entered the United States without inspection in July 1994 and remained in the United States until 1999, when he traveled to Mexico and then reentered the United States without inspection. The applicant 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 remain in the United States with his spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of District Director* dated August 18, 2004. An appeal of this decision was rejected by the AAO as untimely. *See Decision of the Director* dated March 20, 2006.

On appeal, counsel states that the applicant's Notice of Appeal (Form I-290B) was sent to the Los Angeles District Office of U.S. Citizenship and Immigration Services (CIS) on September 16, 2004 and was received by that office on September 17, 2004. *See Fedex Airbill and printout of shipment tracking, Exhibit 3.* Counsel states that the appeal was timely filed within 33 days of the denial dated August 18, 2004, but that the district office erroneously indicated it was received on September 21, 2004 when forwarding the appeal to the AAO. *See Motion to Reopen* at 2. Counsel further asserts that the evidence in the case, including additional documentation submitted with the appeal, supports a finding of extreme hardship to the applicant's wife should the applicant be denied a waiver of inadmissibility. Specifically, counsel states that the applicant is the sole provider for his family and also provides emotional support to his wife, and his removal would result in extreme financial and emotional hardship to her. *See Brief in Support of Appeal* at 6.

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 –
>
> (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 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.

The AAO notes that the record contains several references to the hardship that the applicant's children would suffer if they were to relocate to Mexico. Section 212(a)(9)(B)(v) of the Act provides that a waiver of 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. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. The applicant's spouse is, however, the only qualifying relative for the waiver, and hardship to the applicant's children will therefore not be separately considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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 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.

U.S. court decisions have additionally 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 addition, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS, supra,* the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. 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.

Counsel states that there are several factors that, when considered in the aggregate, would amount to extreme hardship to the applicant's wife if he were denied admission to the United States. In support of the appeal, counsel has submitted additional documentation including declarations prepared by the applicant and his wife, birth certificates of the applicant's wife and children, a letter from the applicant's stepdaughter's school, birth certificates and permanent resident cards for the applicant's wife's family members, a copy of the applicant's driving record, income tax returns, and documentation of conditions in Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant is a thirty year-old native and citizen of Mexico who has resided in the United States since July 1994, when he entered the country without inspection. He married his wife on April 16, 2001 and they have a daughter together who was born on February 6, 2001. The record further reflects

that the applicant's wife is a twenty-six year-old native and citizen of the United States. The applicant resides in Huntington Park, California with his wife, daughter and nine year-old stepdaughter.

Counsel asserts that the applicant's wife would suffer extreme hardship if she were to relocate to Mexico with the applicant, and states that lengthy residence in the United States alone can establish extreme hardship. *Brief* at 5. Counsel states that the applicant's wife has resided in the United States her entire life and her two children and several family members, including her parents and siblings, reside in the United States. The applicant's wife states in her declaration that they are "a very close-knit family" and have always lived near each other. *See declaration of* [redacted] dated September 13, 2004. She further states: "I want to remain in the United States with my parents and brothers because we have always lived close to each other and we are a very united family who sticks together through good and bad." Counsel maintains that separation of family is a "strong factor in establishing 'extreme hardship,'" and cites the decision of the Ninth Circuit Court of Appeals in *Cerrillo-Perez v. INS,* 809 F.2d 1419 (9th Cir. 1987), to support the assertion that "the family unit is an extremely important equity in the United States. *Brief* at 7. Although it appears separation from her family members in the United States would cause the applicant's wife some hardship, there is no evidence on the record to establish that the effects of this separation would be more severe that that normally experienced as a result of removal. As noted above the BIA has held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *See Matter of Pilch, supra.*

Counsel additionally asserts that the applicant's wife would experience financial hardship if she relocated to Mexico with the applicant because of the lack of financial opportunities and further states that she and her children "will be exposed to the poor country conditions that exist in Mexico" as well as a lack of educational opportunities. *Brief* at 9. In support of this assertion, counsel submitted income tax returns for the applicant indicating that he earns about $10,000 per year and information on economic conditions in Mexico. The documentation submitted states that the income distribution in Mexico is skewed, with 10 percent of the population earning 37.8 percent of total income, and also describes shortages of schools and teachers and other problems with the educational system due to lack of funding. *See U.S. Department of State, 2003 Country Report on Human Rights Practices- Mexico, Exhibit N; Los Angeles Times, "Mexico's Schools Can't Keep Up," September 21, 2004, Exhibit M.* The applicant's wife states in her declaration that it would be difficult for their family if they relocated to Mexico with the applicant because "he has nothing in Mexico" and would not be able to provide for the family like he does in the United States. The U.S. Supreme Court 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. Although the applicant's wife would likely experience a decline in standard of living if she were to relocate to Mexico with the applicant, the record does not establish that the applicant's wife would suffer economic hardship beyond the common results of deportation.

Counsel additionally asserts that the applicant's wife would suffer economic and emotional hardship if she remained in the United States without the applicant because he is the sole breadwinner for the family and also provides emotional support to his wife and her family. *Brief* at 6. The applicant's wife states: "Noe has never separated from me or the children and if [we] had to separate it would be traumatic because we are very dependent on each other." *Declaration of* [redacted]. The record contains no documentation of their expenses and financial situation or evidence indicating that the applicant's wife would be unable to work if

she remained in the United States without the applicant. Further, even if the loss of the applicant's income would have a negative impact on her financial situation, the evidence submitted does not establish that this economic detriment would be sufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang, supra.*

Counsel also asserts that the applicant's wife would suffer extreme emotional hardship if she remained in the United States and were separated from the applicant, and the applicant's wife states in her affidavit that she is very dependent on the applicant for emotional support. No other evidence concerning her mental health or the effects of being separated from the applicant was submitted. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's removal or exclusion. Although the depth of her distress over the prospect of being separated from her husband is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship and familial and emotional bonds exist.

It appears from the record that any emotional or financial hardship to the applicant's wife would be the type of hardship that family members would normally suffer as a result of removal or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *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).

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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.