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

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: MEXICO CITY, MEXICO Date: MAR 07 2008

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:

[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 Form I-601, Application for Waiver of Ground of Inadmissibility (I-601 Application) was denied by the District Director, Mexico City, Mexico on March 27, 2006. The matter was appealed to the Administrative Appeals Office (AAO). The appeal was rejected by the AAO as untimely on October 1, 2007. The AAO now moves to reopen the matter *sua sponte* based on the submission of evidence that the appeal was timely filed. The October 1, 2007, AAO decision will be withdrawn. The appeal will be dismissed, and the I-601 application denied.

The applicant is a native and citizen of Mexico. The applicant 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 presently seeks a waiver of her ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director determined the applicant had failed to establish that a qualifying relative would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's I-601 application was denied accordingly.

On appeal the applicant asserts, through counsel, that the evidence establishes her husband will suffer extreme hardship if the I-601 application is denied.

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

> [A]ny 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.

The Board of Immigration Appeals (Board) clarified in its decision, *In re Rodarte-Roman,* 23 I&N Dec. 905, 908 (BIA 2006), that a:

> "[D]eparture from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) . . . if that departure was preceded by a period of unlawful presence of at least 1 year. . . . [T]he departure which triggers inadmissibility . . . must fall at the end of a qualifying period of unlawful presence. . . .

The record reflects that the applicant entered the United States without inspection in February 1997. She remained unlawfully in the United States until June 5, 2003, at which time she departed while under an order of removal. The applicant was unlawfully present in the United States for more than one year between April 1, 1997 (the date on which the unlawful presence provision went into effect) and June 5, 2003. Accordingly, the applicant is subject to section 212(a)(9)(B)(i)(II) of the Act, unlawful presence inadmissibility provisions.

Section 212(a)(9)(B)(v) of the Act provides that:

> [T]he Attorney General [now Secretary, Department of Homeland Security, "Secretary"] has sole discretion to waive clause [212(a)(9)(B)](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 applicant married a U.S. citizen on February 5, 2002. The applicant's husband [redacted] is thus a qualifying family member under section 212(a)(9)(B)(v) of the Act. It is noted that U.S. citizen and lawful permanent resident children are **not qualifying relatives under section 212(a)(9)(B)(v) of the Act. Hardship** claims made with regard to the [redacted] U.S. citizen stepson and stepdaughter may thus only be considered to the extent that they relate directly to extreme hardship suffered by the [redacted]

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board deemed the following factors to be relevant in determining extreme hardship to a qualifying relative:

> [T]he 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.

The Board held in *Matter of Ige,* 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996.) Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. *Perez v. INS, supra. See also, Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991.)

The equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation (removal) proceedings, and with knowledge that the alien might be deported. *Ghassan v. INS,* 972 F.2d 631 (5th Cir. 1992.)

In the present matter, the record reflects that the applicant was placed into deportation proceedings on November 15, 1996. She was ordered deported from the United States on June 26, 1998.[1] The applicant and [redacted] were married in the U.S. on February 5, 2002, well after the applicant was ordered deported from the United States. Any hardship pertaining to [redacted]'s separation from his wife will therefore be accorded diminished weight.

---

[1] The record reflects that the applicant was placed into deportation proceedings with her ex-husband. The applicant and her ex-husband applied jointly for Suspension of Deportation relief based on hardship to their two children. The applicant and her ex-husband were divorced on July 16, 1997. She and her ex-husband were jointly ordered deported to Mexico on June 26, 1998.

The record contains the following evidence relating to extreme hardship claim:

Letters written by in April and September 2005, stating in pertinent part that his family has been in Mexico since 2003, and that he finds it difficult to be separated from them. He states that the separation from his family is affecting him psychologically, and that at times it affects his concentration and his ability to work at his two restaurant jobs. He states that he works two jobs in order to support himself and his family, and he states that he feels depressed when he talks with his family on the phone and hears how much his stepchildren want to return to the United States. In a letter written in April 2006, Mr. [redacted] states further that due to his separation from his family, he often has negative thoughts, that he suffers from severe depression, and that he is on medication for his depression.

A June 15, 2006, Psychological Evaluation prepared for [redacted] by [redacted], reflecting in pertinent part that during the prior year [redacted] suffered severe depression due to his separation from the applicant and his step-children, and indicating that he was treated with antidepressant medicine – she is unsure which medicine - to help his depression and a difficulty with sleep. The evaluation indicates that Mr. [redacted] depression is now moderate, with passive suicide ideations absent imminent intent.[2]

An April 7, 2006, medical prescription reflecting that the applicant was prescribed Xanax for 30 days, with the option of two refill orders.

Employment letters reflecting that the applicant works as a bus boy fulltime at two restaurant locations.

A letter reflecting that the applicant was robbed of her purse in Mexico in December 2004.

September 2005 psychological and medical reports reflecting that [redacted] stepchildren are suffering from anxiety and are having a hard time adjusting to life in Mexico, and that they want to return to the United States.

As previously noted, any hardship pertaining to [redacted] separation from his wife will be accorded diminished weight in the present matter. The AAO finds, upon review of the totality of the evidence, that the applicant has failed to establish that her husband would suffer extreme hardship if he remains in the U.S. without the applicant. The evidence in the record fails to demonstrate that [redacted] is providing for the applicant and her children financially. The record also lacks evidence to demonstrate or establish that the applicant is unable to work in Mexico. Additionally, the AAO notes that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." *INS v.*

[2] The record reflects [redacted], Ph.D. also prepared a psychological evaluation on May 19, 1998, for the applicant and her ex-husband and children, for use in their deportation proceedings.

Jong Ha Wang, 450 U.S. 139 (1981.) The psychological and medical evaluations for [redacted] stepchildren also fails to demonstrate extreme hardship to [redacted]. Moreover, [redacted] psychological and medical evidence fails to demonstrate that [redacted] presently suffers from severe or untreatable depression.

The applicant additionally failed to establish that [redacted] would suffer extreme hardship if she were denied admission into the United States and he moved to Mexico to be with his family. The applicant makes no claim of hardship that [redacted] would suffer in Mexico. The AAO notes further that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, has not been found to rise to the level of extreme hardship. *See Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir. 1986.)

Section 212(a)(9)(B)(v) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that her husband will suffer extreme hardship if she is denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the application denied.

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