U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H3

FILE: [redacted] Office: MEXICO CITY Date: APR 07 2009

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 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who resided in the United States from September 2001, when he entered the country without inspection, to April 10, 2005, when he returned to Mexico to apply for an immigrant visa. He was found to be inadmissible to the United States under 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 for a period of one year or more. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. He 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 to reside with his wife.

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 the District Director* dated March 22, 2006.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant's wife was not suffering extreme hardship as a result of being separated from the applicant and in failing to consider hardship to her children as a relevant factor in assessing extreme hardship. *See Counsel's Brief in Support of Appeal* at 1-2. Specifically, counsel claims that the applicant's wife would suffer devastating consequences as the head of a single parent household, and the hardship to her children resulting from being separated from their stepfather would negatively affect the applicant's wife emotionally and financially. *Brief* at 2. In support of the waiver application and appeal counsel submitted affidavits from the applicant's wife, affidavits from the applicant's two stepchildren, a letter from the applicant's church, letters from the applicant's employer in the United States and his wife's employer, and copies of receipts for rent payments. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.
>
> (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 record contains references to hardship the applicant's stepchildren would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

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 *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, 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.

In the present case, the record reflects that the applicant is a thirty-seven year-old native and citizen of Mexico who resided in the United States from September 2001, when he entered without inspection, until April 2005. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from September 2001 to April 2005, when he returned to Mexico. The applicant's wife is a fifty year-old native of Mexico and citizen of the United States. The applicant currently resides in Mexico and his wife resides in Rialto, California.

Counsel asserts that the applicant's wife is suffering extreme emotional hardship as a result of being separated from the applicant and due to the effects of the separation on her children. In support of this assertion he submitted affidavits from the applicant's wife and stepchildren. The applicant's wife states that she lived a very sad life before meeting the applicant and was abandoned by the biological father of her children. *See Affidavit from* [redacted] dated November 14, 2005. She states that her children became attached to him and they are all very sad as a result of his absence, and she needs his support to help raise her children, give them advice, and watch them when she is at work. *Affidavit from* [redacted] dated November 14, 2005. She additionally states that the applicant has been an important role model to her children and they miss him terribly. *See Affidavit of* [redacted] dated November 16, 2005. Her children state that their lives are worse since the applicant left and they and their mother are sad a lot of the time. *See Affidavits from* [redacted] *and* [redacted] dated November 12, 2005.

Counsel asserts that the applicant's wife is suffering extreme emotional hardship due to separation from the applicant and the effects of the separation on her two children, but there is no evidence on the record concerning her mental health or the potential psychological effects of the separation. The evidence does not establish that any emotional difficulties the applicant's wife is experiencing are more serious than the type of hardship an individual would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her distress caused by separation 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 deportation 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 exists.

Counsel asserts that the applicant's wife is suffering financial hardship due to the loss of the applicant's income, and he states that she does not have much money left after paying the rent, the household's major expense. *Brief* at 2. The applicant's wife states that she and her children are having economic difficulties since the applicant returned to Mexico, and he always helped with household expenses such as the rent and food when he resided with them. *See Affidavit from* [redacted] dated November 14, 2005. The AAO notes that the record contains documentation that the applicant's wife earns $9.40 per hour working as a packer at a food company and pays $595 per month in rent. No other documentation concerning the expenses or overall financial situation of the applicant and his wife was submitted and there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of separation from the applicant. Any financial impact of the loss of the applicant's income therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

Counsel asserts that the applicant's wife could not relocate to Mexico with the applicant because her children were born and raised in the United States and would not be able to adjust to life there. The

applicant's wife states that she has no relatives in Mexico and has three siblings and five children, the youngest of whom is now seventeen, residing in the United States. *See Affidavit from* [redacted] dated November 16, 2005. She further states the she would be unable to take her children to Mexico because they have lived their whole lives in the United States. *Id.* No documentation was submitted concerning conditions in Mexico or the life of the applicant's children in the United States. Further, although the applicant's wife states that she has close relatives in the United States and no close family ties in Mexico, no evidence was submitted to support this assertion or explain whether the applicant's wife and her children spend time with their relatives in the United States and would therefore suffer hardship from being separated from them. 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)).

The emotional and financial hardship the applicant's wife would experience if he is denied admission to the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation 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).

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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.