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

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date APR 24 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 (INA), 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.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Mexico, the wife of a U.S. citizen and mother of a U.S. citizen daughter, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and daughter.

The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The district director also found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse and child, and denied the application. On appeal, counsel provided additional evidence.

Notwithstanding that the applicant and counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

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

> Any alien (other than an alien lawfully admitted for permanent residence) who –
>
> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or
> >
> > (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.

On a G-325A Biographic Information form that she signed on October 27, 2005, the applicant indicated that she had lived in San Benito, Texas from 1986 to 2005.

On a Form DS-230 Application for Immigrant Visa and Alien Registration that she signed on October 26, 2005, the applicant stated that she entered the United States without inspection during 1986, lived in San Benito, Texas from 1986 to October 2005, and was unlawfully present in the United States for more than one year.

On a Form OF-194, an officer of USCIS stated that the applicant admitted, under oath, on October 26, 2005, that she entered the United States without inspection and lived unlawfully until she was deported in January of 1997, then re-entered without inspection in January of 1997, maintaining unlawful presence until October 2005.

The Form I-601, Application for Waiver of Inadmissibility, which both the applicant and her husband signed on October 27, 2005, states that the applicant entered the United States without inspection during 1986 and resided in San Benito, Texas until October 2005. The applicant submitted that waiver application in Ciudad Juarez, Mexico on December 6, 2005, which indicates that she had departed the United States.

Pub. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides at section 309,

> (a) IN GENERAL.-Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division, this subtitle and the amendments made by this subtitle shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act (in this title referred to as the "title III-A effective date").

At section 301(b)(3), the IIRIRA provides,

> TREATMENT OF UNLAWFUL PRESENCE BEFORE EFFECTIVE DATE.-In applying section 212(a)(9)(B) of the Immigration and Nationality Act, as inserted by paragraph (1), no period before the title III-A effective date shall be included in a period of unlawful presence in the United States.

The IIRIRA was passed by the 104th United States Congress on Sept. 30, 1996. Therefore, for the purpose of this inadmissibility provision, the applicant's illegal presence began on April 1, 1997 and continued until October 2005, a period of more than one year. The AAO finds, therefore, that the applicant is inadmissible for ten years after the date she left the United States during October 2005, which period has not yet ended. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

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

> The Attorney General [now Secretary of Homeland Security] 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 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act 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 or her children or stepchildren is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a 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).

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 nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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 has held:

> 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. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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 a letter dated October 11, 2005, the applicant's husband related various reasons that the applicant should be together with her daughter, and various reasons that the child should be in the United States, rather than in Mexico. Although those issues are not directly related to hardship to the applicant's husband, the AAO will consider whether hardship to his daughter would cause him some hardship, and, if so, whether this hardship rises to the level of extreme hardship when combined with other hardship factors.

The hardship factors that the applicant's husband cited as reasons that his daughter, and therefore his wife, should be in the United States are the limited educational opportunities in Mexico and the high crime rate in Matamoros. The applicant's husband stated, though, that if the instant appeal is denied, he expects his wife and youngest daughter to move to San Luis Potosi, the home state of the applicant and her husband, and the expense of visiting her there would limit his ability, and the

ability of his youngest daughter if she, in the alternative, lived in the United States, to visit the applicant in Mexico.

The record contains no indication that the crime rate in San Luis Obispo is high, and, therefore, no indication that the applicant and her youngest daughter would be exposed to a high crime rate if the application is denied. Further, although the applicant has alleged that he is unable to support his wife in her current border town location in Mexico, the record contains no indication that the cost of supporting her in San Luis Obispo would be equally expensive.

As to the asserted lower quality of education available to the youngest daughter, if she remains in Mexico, the applicant has not submitted evidence to support this assertion. Further, the AAO finds that this hardship is a normal consequence of removal or inadmissibility and it has not been shown that more limited educational opportunities for the applicant's daughter would result in hardship to the applicant's husband, that, when combined with other hardship factors, rises to the level of extreme hardship. Further, the applicant's daughter is free to return to the United States to take advantage of the education opportunities afforded to her here.

Finally, the applicant's husband has not addressed the possibility that he might relocate in Mexico, and what hardship, if any, he would experience there. Such a move would obviate the emotional hardship that he feels at being separated from his wife.

The record contains a letter dated October 2, 2006, that [redacted], **the applicant's stepdaughter** and the natural child of her husband, wrote to a U.S. Senator. She stated that, to support the applicant in Mexico, her father, the applicant's husband, rented her a small apartment in Matamoros, Mexico, but that maintaining his household in the United States and an apartment in Mexico, in addition to the cost of travel to Mexico on what she states is a "near daily basis" has taken a toll on him, financially, emotionally, and physically.

In a letter dated October 6, apparently of 2006, [redacted], another stepdaughter, stated that because she and her full-siblings live elsewhere, the applicant is all her father has. She further noted that having to work extra hours to maintain a house in Texas and a residence for the applicant in Mexico is taking a physical toll on her father. She stated, yet further, that the applicant is the only person capable of preparing well-balanced meals for the applicant's husband, and capable of reminding him to rest and to take his medication

The record contains a letter from [redacted] a clinical social worker at Modern View **Clinical Services in Edinburg, Texas.** [redacted] stated that she evaluated the applicant's husband on September 25, 2006 pursuant to a recommendation by the applicant's husband's medical doctor. [redacted] further stated that the applicant originally worked as a housekeeper for [redacted] who is now her husband, before marrying him; that they married on January 18, 2002; that a child was born of that union on February 24, 2003; and that the applicant watched her husband's diet and monitored his stress level.

[redacted] stated that since their forced separation the applicant's husband has been obliged to work many extra hours in order to sustain his wife and child in Matamoros, and is distressed to be separated from his wife. She stated that he has lost weight and his appetite, and that his cholesterol and blood pressure have risen. She asserted that he has suffered from insomnia and felt exhausted during his waking hours. She also stated that the young daughter of the applicant and her husband is withdrawn.

[redacted], diagnosed the applicant's husband as having major depression and stated that his blood pressure is unstable. She further stated that, in her professional opinion, his major depression and elevated blood pressure spring from separation from his wife and child.

In a letter dated October 10, 2006, the applicant's husband also stated that he has been under extreme stress trying to support his wife and child in Matamoros, that he is behind in some bills, that he worries about the safety of his wife and child, and that the stress has adversely affected his job performance and he is afraid that he might lose his job. He stated that his wife prepared healthy meals for him when she as in the United States, and that since she left his cholesterol and blood pressure have risen.

Because the social worker's letter appears to have been based on a single appointment, her basis for stating that the applicant's husband's cholesterol and blood pressure have risen is unclear, but it is likely, based on that circumstance, that the rise was self-reported. She further stated that the applicant's husband is suffering from major depression and that this and his elevated blood pressure were caused by separation from the applicant. Again, the social worker did not reveal her basis for the statement that the applicant's husband's problems are a result of separation from the applicant.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report appears to be based on a single interview between the applicant's husband and the social worker. The record fails to reflect an ongoing relationship with the applicant's husband or any history of treatment for the applicant's husband's depression. Moreover, the conclusions reached in the submitted report, being based, apparently, on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established professional relationship, thereby rendering [redacted] findings speculative and diminishing the report's value in determining extreme hardship.

The evidence shows that the applicant's husband has supported his wife and child in Matamoros. The AAO acknowledges that this has strained his finances, as he and others allege, and caused him stress. However, the record contains no comparison of the applicant's husband's earnings and expenses to demonstrate whether the applicant's husband is able to sustain the extra burden, and no evidence pertinent to whether the applicant's expenses could be reduced. The evidence is insufficient to demonstrate that any financial hardship, when combined with other hardship factors, rises to the level of extreme hardship.

The emotional hardship occasioned to the applicant's husband must currently be somewhat attenuated by the applicant living in Matamoros, which is fairly close to the applicant's husband's

home in San Benito, Texas, which, as the applicant's stepdaughter noted, allows him to visit his wife almost daily.

The applicant's husband stated, however, that because Matamoros is dangerous, his wife would be obliged, if not admitted to the United States, to relocate in San Luis Potosi, roughly 350 miles distant. This further separation would likely increase one aspect of the stress felt by the applicant's husband. Given that the applicant and her husband anticipate that the applicant would move to San Luis Potosi, the expense of maintaining her in Matamoros is not directly relevant to the hardship the applicant's husband might expect in the future if the applicant is refused admission.

Without any evidence to support the proposition, the AAO rejects the assertion that the applicant is the only person capable of preparing well-balanced meals for her husband and reminding him to rest and take medications. No reason was given that the applicant's husband could not accomplish those tasks without assistance.

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 husband faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *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); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally

insufficient to establish extreme hardship. *See* INS v. Jong Ha Wang, *450 U.S. 139 (1981)* (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.