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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H3

FILE: [redacted] Office: ST. PAUL, MINNESOTA Date: JAN 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).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, St. Paul, Minnesota, 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 has resided in the United States since 1987. She left the United States and reentered without inspection in 1997 and again departed the United States and reentered without inspection in November 2000. She 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 Lawful Permanent Resident and is the beneficiary of an approved Petition for Alien Relative. 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 her spouse and children.

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 July 5, 2006.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) abused its discretion in denying her waiver application and by not fully taking into consideration the cumulative effect of the hardships to her husband if she is removed from the United States. Counsel states the USCIS erred in determining that the applicant had argued "simple separation and economic hardship," and states that the evidence submitted established extreme hardship. Counsel further states that USCIS failed to properly weigh the adverse factors present in the case against the hardship factors in determining whether to grant the waiver. In support of the waiver application counsel submitted an affidavit from the applicant's husband, copies of income tax returns filed by the applicant and her husband, and copies of their marriage certificate and their children's birth certificates. 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 –
>
> (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 children would experience if the waiver application is 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 forty-three year-old native and citizen of Mexico who has resided in the United States since 1987, when she entered without inspection, and has departed and reentered the United States without inspection on two occasions, once in 1997 and once in 2000. The applicant resided unlawfully in the United States for over one year before she departed in 2000 and she is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The

applicant's husband is a thirty-seven year-old native and citizen of Mexico and Lawful Permanent Resident. The applicant and her husband and their children reside in St. Louis Park, Minnesota.

Counsel for the applicant asserts that her husband would suffer extreme hardship if the applicant were removed from the United States. In his affidavit, the applicant's husband states that it would be a great hardship for him and their two U.S. Citizen children to move to Mexico. *See Affidavit of* [redacted], dated May 22, 2006, at 2. He states that it would be very hard for him and the applicant to get jobs in Mexico that pay similar salaries to their jobs in the United States and also states that health care is not good in Mexico and is not a benefit offered by employers. *Id.* At 2-3. He further states,

> Even though neither of us has any serious medical conditions we worry about having appropriate medical care. The conditions in Mexico are very different from those in the United States. The air is dusty and dry. Children often develop asthma in these conditions. . . . I would also feel guilty if I subjected my children to the inferior health care in Mexico. . . . In addition, it would be very expensive to send our children to a good private school that would be equivalent to the type of education our children receive in the public schools of the United States. *See Affidavit of* [redacted] at 3.

The AAO notes that no evidence was submitted related to economic conditions, access to health care, or the educational system in Mexico to support the applicant's husband's assertions concerning hardship to himself and his children if they were to relocate. 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 applicant's husband also states that it would be extremely difficult for him to raise their children on his own if he remained in the United States without the applicant, and further states that he "cannot even fathom" being separated from the applicant and their children if they moved to Mexico, and that he has never been separated from them for even one day. *See Affidavit of* [redacted] at 4. He additionally states that it would be difficult for him to pay their mortgage and other bills without the applicant's income, and he would also have to arrange for daycare for their children. He states, "It would be impossible to afford all the costs I would have to bear on my own." *Id.* at 4.

The AAO notes that no documentation concerning the family's mortgage or other expenses was submitted to support an assertion that the applicant's husband would suffer financial hardship as a result of separation from the applicant. Income tax returns submitted with the waiver application indicate that the applicant earned about $17,000 and her husband earned about $26,000 in 2005, and she earned about $15,000 and he earned about $20,000 in 2004. Although it appears the applicant's husband would be adversely affected by the loss of the applicant's income, 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 removal. The 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 husband. *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).

The applicant's husband states that he would suffer emotional hardship due to separation from the applicant, but there is no evidence provided concerning his mental health or the potential emotional or psychological effects of the separation. 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 his spouse's removal or exclusion. Although the depth of his distress over the prospect of being separated from his wife is not in question, a waiver of inadmissibility is only available 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 exists.

There is no evidence on the record to establish that the applicant's husband would experience any hardship beyond 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 her Lawful Permanent Resident spouse as required under sections 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.