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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: JUL 06 2009

CDJ 2004 786 394

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 APPLICANT:

SELF-REPRESENTED

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 Shumway

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant, [redacted], is a native and citizen of Mexico. He 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 and seeking admission within 10 years of his last departure from the United States. 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 return to the United States to join his United States citizen wife, [redacted].

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, the applicant's spouse asserts that the applicant should be granted a waiver based upon family separation, impact on health and financial hardship. In support of the appeal, the applicant's spouse furnished medical documentation and financial records. The entire record was reviewed and considered in rendering a decision in this case.[1]

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 the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an

[1] The record contains two documents in Spanish that do not have corresponding certified English translations: a handwritten statement from [redacted]; and a State of California Employment Development Department notification, dated October 27, 2005. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

> 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 [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.

In the present application, the record reflects that the applicant entered the United States from Mexico without inspection in February 1999. The applicant resided in the United States until he voluntarily departed to Mexico in October 2005. Consequently, the applicant accrued unlawful presence for a period of over six years prior to his departure from the United States. The applicant is seeking admission within ten years of his October 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).

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 (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States 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.

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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record reflects that the applicant wed [redacted], a U.S. citizen, on April 19, 2003. [redacted] is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and [redacted] have a five year old U.S. citizen child, [redacted]. Hardship to [redacted] will be considered insofar as it results in hardship to [redacted].

On appeal, [redacted] asserts that if the waiver is denied, her marriage and family life will be destroyed. She contends that she is suffering from depression and anxiety related to her separation from her husband. [redacted] indicates that she does not want to be forced to move to Mexico because she will not have a job, housing and health insurance. She states that she was forced to place her daughter with a babysitter. [redacted] maintains that without her husband's income she cannot pay all of her expenses, such as utilities, rent, insurance and cable.

The AAO will evaluate each of the hardship factors put forth by [redacted]. First, [redacted] contends that her marriage and family life will be destroyed. [redacted] states that she will lose her husband if his waiver is not approved. [redacted] further contends that her daughter, [redacted], is growing up without the applicant's presence.

U.S. court decisions have repeatedly 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), 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. *Hassan v. INS, supra,* held further 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship when combined with other hardship factors.

Second, [redacted] contends that she is from suffering depression and anxiety related to her separation from her husband. [redacted] furnished a letter from [redacted], Clinica de Salud del Valle de Salinas, located in Salinas, California. The letter states that [redacted] has been feeling depressed since her husband was deported.[2] It further states that [redacted] complains of the inability to sleep, difficulty concentrating, and feeling irritable to very emotional at times. The letter indicates that the applicant is taking Prozac 20 mg, which is helping her symptoms only mildly. [redacted] also furnished various medical records from Clinica de Salud del Valle de Salinas. The pertinent records, dated July 3, 2006 and July 6, 2006, address the applicant's treatment for anxiety.

[2] The AAO notes that the record shows the applicant voluntarily departed to Mexico.

The AAO notes that [redacted] letter fails to establish her qualifications as a licensed mental health professional or other experience in the mental health field. The letter indicates that the applicant's spouse is suffering from "situational depression." However, the record does not indicate whether this diagnosis is from an evaluation conducted by a licensed mental health professional. Nor does it indicate whether situational depression is a diagnosis listed in the Diagnostic and Statistical Manual of Mental Disorders. While the AAO acknowledges that Prozac is a relatively well-known anti-depressant, the record reflects that the applicant was prescribed Prozac only three days prior to the issuance of [redacted] letter. Moreover, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. For these reasons, the AAO cannot determine the severity of the applicant's spouse's medical condition, if indeed she has one, or properly evaluate its contribution to the analysis of extreme hardship.

Third, [redacted] maintains that without her husband's income she cannot pay all of her expenses, such as utilities, rent, insurance and cable. As evidence of her earnings, [redacted] furnished copies of her earnings statements, reflecting three weeks of her employment with Double Lucky, Inc. The applicant documented her expenses (rent, utility bills, insurance, childcare, and other costs) with a letter from the Resident Manager of her apartment building, a State Farm car insurance invoice, an AT&T telephone invoice, a California DMV registration renewal receipt, and a letter from [redacted] babysitter. The AAO finds that the foregoing documentation is incomplete in that it does not establish [redacted] occupation, annual income, and any efforts she has made to find stable employment. Furthermore, neither the applicant nor [redacted] has described where the applicant was employed during his residence in the United States, his occupation, and annual salary. This information is necessary to evaluate the hardship the applicant's spouse may be experiencing in the absence of the applicant's prior income and to gauge the applicant's earning potential in the United States. Finally, the AAO notes that 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 final issue to be addressed is whether the [redacted] would suffer extreme hardship if she accompanied the applicant in Mexico. [redacted] indicates that she does not want to be forced to move to Mexico because she will not have a job, housing and health insurance. As stated above, the record does not reflect [redacted]'s current occupation. Nor does it demonstrate that employment for someone of her background and skills is unavailable or describe any efforts by [redacted] to find employment in Mexico. In addition, neither the applicant nor [redacted] have described the applicant's current housing and employment situation in Mexico. There is also no indication of whether the applicant has support from his family members in Mexico. Finally, [redacted] has failed to describe any cultural, linguistic or other hurdles she and her daughter may suffer if she moved to Mexico. The AAO observes that [redacted]'s birth certificate reflects that her parents are from Mexico, indicating that she is likely familiar with the Mexican culture and may have family members residing in Mexico. Accordingly, the AAO cannot conclude that [redacted] would suffer extreme hardship if she accompanied the applicant to Mexico.

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife, [redacted], faces extreme hardship if the applicant is refused admission to the United States. Having found the

applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. *See* 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.