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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CIUDAD JUAREZ Date: JUL 07 2009

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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 Officer in Charge (OIC), Ciudad Juarez, Mexico, 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. lawful permanent resident (LPR); the mother of two children, of whom one is a U.S. citizen; 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.

The OIC 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 OIC also found that the applicant failed to establish extreme hardship to her LPR spouse and denied the application. On appeal, counsel argued that the evidence demonstrates that the applicant's departure has caused, and continues to cause, extreme hardship to her husband.

Although counsel did not appear to contest the OIC'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 her Application for Immigrant Visa (Form DS-230), which she signed on May 27, 2005, the applicant stated that she lived in Oneonta, Alabama from November 1999 to April 2001, in Sacramento, California, from April 2001 to September 2001, and in Oneonta, Alabama from September 2001 to June 2004, when she returned to Mexico. In the section reserved for the applicant to indicate the type of visa she then had, the applicant entered "N/A."

On a Biographic Information form (Form G-325), which she signed on May 27, 2005, the applicant repeated that residential history. On the Form I-601 the applicant reiterated that residential history

and stated that her status during those years was "Illegal." That application was filed in Ciudad Juarez, Mexico and gave an address in Mexico for the applicant, which confirms that she left the United States. The record contains no evidence that the applicant ever had any legal status while residing in the United States.

The evidence in the record is sufficient to show that the applicant was unlawfully present in the United States from November 1999 to June 2004, and that she has since left the United States. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. 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 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).

The record contains a letter, dated December 15, 2005, from the applicant's husband. In it, he stated that his children are experiencing difficulty adjusting to life in Mexico and are missing the education that they would be receiving if they were in the United States. He also stated that supporting his family in Mexico was straining his finances, and that he would sometimes forego medical care when he was ill. He did not describe the nature or frequency of the illnesses for which he did not seek medical treatment or any consequences of his declining to seek treatment. The applicant's husband did not otherwise describe any hardship that the applicant's absence from the United States was causing him.

The record contains a letter, dated May 26, 2006, from a clinical psychologist in Irapuato, Guanajuato, Mexico. [redacted] stated that he had interviewed the applicant and the applicant's daughter, Andrea, as well as the child's teacher and unidentified community members. He stated that, based on their information and his observations, the applicant, the applicant's daughter, and the applicant's son are "deeply suffering the effects of the separation of the father." He stated that the applicant's daughter is now ". . . a shocked girl with a child version of post traumatic stress." He further stated that the applicant's daughter ". . . cries easily, has difficulties doing simple tasks, and hardly pays attention to short instructions," and further, "According to her teacher he [sic] is a bright kid that now seem [sic] sad and withdrawn." [redacted] did not state any opinion as to whether the situation has caused or will cause the applicant's husband to suffer extreme hardship.

The record contains a letter, dated June 15, 2006. That letter appears to be from A typed letterhead indicates that it is from [redacted] That letter states, in its entirety,

> [The applicant's husband] due to a problem of anxiety and depression is having problems with his job. He is not doing his job like he used to do before having this problem. I am not giving him enough work because of the anxiety and depression don't let him do the work how he is supposed to do. I am worried he might have an accident because he is the one who drives the truck and works several machines. I would like for you to give him another opportunity so he could have his family back with him, having his family with him he would do his job the way he used to.

[Errors in the original]

The record contains a letter, dated June 15, 2006, from [redacted], a medical doctor in Oneonta, Alabama. The body of that letter states, in its entirety,

> [The applicant's husband] has been in our office twice since 6/8/06 with anxiety & depression concerning his separation from his wife who is detained in Mexico due to immigration technicalities. He has been unable to work during most of that time because of his fatigue from anxiety.

On appeal, counsel stated, "[The applicant's husband] has been diagnosed with severe depression and anxiety due to his separation from his wife and children," and "The depression [he] is suffering is so profound that is work performance, and consequently, his ability to support himself have been extremely impaired." Counsel argued that this constitutes extreme hardship and that the waiver application should therefore be approved.

The May 26, 2006 letter from [redacted] discussed hardship to the applicant and the children, but not hardship to the applicant's husband. As was noted above, that hardship is not directly relevant to whether the waiver application should be approved.

In his December 15, 2005 letter, the applicant's husband also described hardship to his wife and children. As to his own hardship, the applicant's husband stated only that he was having difficulty supporting his family in Mexico. The letter did not mention anxiety or depression, severe or otherwise, or any diminution in his ability to work.

The AAO notes that the applicant's husband's medical doctor, [redacted], stated, in his letter of June 15, 2006, that he had seen the applicant's husband twice for anxiety and depression. "Severe depression and anxiety" is counsel's characterization, and is not supported by [redacted] letter. Counsel's assertions are not evidence and will be accorded no evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503 (BIA 1980).

Further, although the input of any medical professional is respected and valuable, [redacted] indicates that his conclusions are based on only two office visits by the applicant's husband. Dr. [redacted] area of medical expertise is unclear from the letter, and there is no evidence in the record that he is a psychiatrist or other mental health professional. The doctor's statement that the applicant's husband has been unable to work for most of the time since the applicant departed is apparently based on the applicant's husband's own self-report. The basis for the doctor's conclusion that the applicant's husband is depressed, whether based on the results of psychological tests, or observations of the doctor, or more self-reporting, is unstated. The record fails to reflect an established, ongoing relationship with the applicant's husband or any history of treatment for the alleged disorder. The conclusions reached in the submitted report do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [redacted] findings speculative and diminishing the report's value in determining extreme hardship.

The applicant's husband, the husband's doctor, and the husband's employer have all stated that the applicant's husband is working less since his wife returned to Mexico. Other than their assertions,

however, no evidence has been submitted pertinent to the diminution of his earnings or the amount of his recurring expenses. The AAO is unable, therefore, to compare the two. The evidence is insufficient, therefore, to show that, because of the applicant's absence, any reduced ability to work experienced by the applicant's husband has resulted in financial hardship that, when combined with other hardship factors, constitutes extreme hardship.

The AAO acknowledges that the evidence shows that the applicant's husband is experiencing emotional hardship as a consequence of separation from the applicant, but the record contains insufficient evidence of the severity of this hardship, and the evidence presented fails to demonstrate hardship that, when considered cumulatively, rises to the level of extreme hardship.

Further, the record contains no information, evidence, or argument to show that the applicant's husband would suffer extreme hardship if he returned to Mexico, the country of his birth, to live with his wife and children.

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 spouse faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that he 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.