U.S. Department of Homeland Security
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 09 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 (the Act), 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).

Ellen C. Johnson

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 record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to 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 in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with his wife and child in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse. The district director also found that the favorable factors did not outweigh the unfavorable factors in the case and denied the application accordingly. *Decision of the District Director*, dated June 5, 2006.

The record contains, *inter alia*: a copy of the marriage certificate for the applicant and his wife, Ms. [redacted], indicating they were married on July 27, 2002; a copy of the birth certificate of the couple's U.S. citizen son; a mental health evaluation for [redacted]; two affidavits from [redacted]; an affidavit from the applicant; a copy of the 2004 U.S. Department of State Country Reports on Human Rights Practices for Mexico; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

> (B) Aliens Unlawfully Present.-
>
> > (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

> 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.

In this case, the district director found, and the applicant does not contest, that the applicant entered the United States in 1997 without inspection and remained until September 5, 2005. The applicant accrued unlawful presence from August 31, 1999, the date the applicant turned eighteen years old, until his departure from the United States in September 2005. *See* section 212(a)(9)(B)(iii)(I), 8 U.S.C. § 212(a)(9)(B)(iii)(I). The applicant, therefore, accrued unlawful presence for over one year. He now seeks admission within ten years of his 2005 departure. Accordingly, he is 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 one year or more.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: 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.

It is not evident from the record that the applicant's spouse has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

In this case, [redacted] states that if her husband's waiver application were denied, she would be "completely destroyed emotionally and economically." [redacted] states her son needs his father's love and discipline. Since her husband departed the United States, [redacted] states she has become depressed, cries at night, has trouble falling asleep, has lost her appetite, and has lost energy and interest in taking care of herself and her son. She claims she "feel[s] so bad and run down" that she has missed one or two days of work each week. In addition, [redacted], a certified nurse assistant, states it would be very difficult to support her household in the United States and another household in Mexico on her income alone. She states she needs her husband's financial support to allow her to continue her education and for their family to succeed in life. She states her husband has been working at a ranch in

Mexico and earns only $10 per week. [redacted] "refuse[s] to go join [her] husband in Mexico [because] [l]iving conditions there are just not fit for humans to live in." She states there is no running water, electricity, or restrooms. She also states there are no doctors, pharmacies, or emergency services available and that education is only available through the sixth grade. *Affidavits from* [redacted] dated August 26, 2005, and June 23, 2005.

A mental health evaluation in the record states that [redacted] has been experiencing depression, anxiety, and feelings of isolation and despair. According to the social worker, [redacted] has also been experiencing trouble sleeping, her blood pressure has increased, and she has lost thirty pounds due to a decrease in appetite. The evaluation also states [redacted] has experienced blood vessels bursting in her eyes due to high blood pressure. In addition, the evaluation states [redacted] feels "constant exhaustion" because she works from 10 p.m. until 6 a.m., while her son is sleeping. According to the evaluation, the couple's son cries for hours whenever [redacted] leaves and after they visit the applicant. The couple's son has purportedly lost weight due to a decreased appetite and is becoming more isolated, no longer playing with his cousins as he previously did. The social worker concludes [redacted] is showing signs of a major depression and her son is showing signs of an adjustment disorder and the beginning signs of an attachment disorder. *Mental Health Evaluation by* [redacted] undated.

After a careful review of the record, there is insufficient evidence to show that has suffered or will suffer extreme hardship if her husband's waiver application were denied.

The AAO recognizes that [redacted] has endured and will continue to endure hardship as a result of the denial of her husband's waiver application and is sympathetic to the family's circumstances. However, their situation, if [redacted] decides to remain 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 based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (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).

Regarding the mental health evaluation for [redacted], although the input of any mental health professional is respected and valuable, the AAO notes that [redacted] was referred for a mental health evaluation only. There is no indication any psychological tests were conducted. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview of self-reported conditions and behaviors, do not reflect the insight and elaboration commensurate with an

established relationship with a mental health professional, thereby rendering the social worker's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

With respect to financial hardship claim, there is insufficient evidence in the record to show extreme financial hardship. [redacted] does not give any details regarding her financial situation. There are no tax or financial documents in the record, and there is no evidence from employers verifying either the applicant's or employment or wages. There is no information addressing monthly expenses, such as rent, mortgage, or child care. Without more detailed information, the AAO is not in the position to conclude that the denial of the applicant's waiver application causes extreme financial hardship to [redacted]. In any event, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also 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).

In addition, there is insufficient evidence to show that would experience extreme hardship if she moved to Mexico with her husband to avoid the hardship of separation. Her claims regarding the living conditions in Mexico does not rise to the level of extreme hardship. According to [redacted] birth certificate, both of her parents were born in Mexico. In addition, they live there for part of each year. *Mental Health Evaluation by* [redacted], undated. Ms. [redacted] does not claim she does not speak Spanish and it is unclear from the record whether she has ever lived in Mexico. Ms. [redacted] does not claim that she or her son has any physical or mental health issues that would make her transition to living in Mexico more difficult than would normally be expected. In addition, although [redacted] standard of living may decline, the applicant has found employment in Mexico. *Affidavit from* [redacted] dated June 23, 2005. In any event, as discussed above, the mere showing of economic detriment is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang, supra; Matter of Shaughnessy, supra.*

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility 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.