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: Office: MEXICO CITY (CIUDAD JUAREZ) Date: JUL 28 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 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 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. She 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 her 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 her United States citizen husband, [redacted]

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

On appeal, counsel asserts that since filing the waiver application, the applicant and her spouse have had a fourth child. Counsel contends that the applicant's spouse's health has deteriorated. Counsel states that the applicant's spouse is afflicted with chronic headaches and is under medical treatment. Counsel states that the applicant's spouse needs the applicant to help take care of their four children and to be physically present for any future medical treatment. Counsel states that if the waiver application is denied, the applicant's spouse would suffer extreme hardship due to his medical condition, he would be limited in his capacity to care for his four U.S. citizen children, and he would be limited in his capacity to seek treatment in the United States. As corroborating evidence, counsel submits an affidavit from the applicant's spouse, medical documentation, and the applicant's children's immunization and school records.[1] The entire record was reviewed and considered in rendering 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-
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> . . . .
>
> (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.
>
> . . . .

[1] The AAO notes that the applicant submitted with her waiver application an OB sonogram referral from a medical clinic in El Paso, Texas, dated August 18, 2005. However, the applicant failed to link this document to her waiver application or otherwise explain its relevance.

> (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 [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 District Director's decision states that the applicant was unlawfully present in the United States for a period of over two years from March 2003 until September 2005. However, the record reflects that the applicant was present in the United States prior to March 2003. The record contains a marriage certificate that shows the applicant married her husband in El Paso, Texas on March 25, 1998. The record also contains the applicant's children's birth certificates that show she gave birth to her eldest child in El Paso, Texas on July 13, 1998 and she gave birth to twins in El Paso, Texas on August 5, 1999. The applicant is seeking admission within ten years of her September 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 herself 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).

As stated, the record reflects that the applicant wed a U.S. citizen, on March 25, 1998. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and her spouse have four U.S. citizen children, [redacted] and [redacted] Hardship to the applicant's children will be considered insofar as it results in hardship to her spouse.

On appeal, counsel filed an affidavit from the applicant's spouse, dated July 13, 2006. The applicant's spouse states that he has felt a lot of stress and depression waiting for an answer to the applicant's waiver request. He states that he has suffered stress and weakness trying to take care of his four children on his own. He states that his mother tries to help him with the children, but she is elderly and cannot help him much. He states that he needs his wife to help him care for the children and prepare them for school. He notes that his baby boy needs his mother to take care of him.

The AAO finds that the difficulties the applicant's spouse is enduring as a result of raising children while separated from the applicant are the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The AAO recognizes that the applicant's spouse is suffering emotionally as a result of his separation from the applicant. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. While, in common parlance, the prospect of separation or involuntary 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 did not intend that a waiver be granted in every case where a qualifying relationship exists. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond 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).

The applicant's spouse asserts in his affidavit that around October 2005 he began to suffer from extreme headaches, which require medical attention. He states that the doctors are trying to figure out what is wrong so that they can treat his ailment. He notes that should he require future treatment in the United States, he would need his wife to help with his recovery and take care of their children. As corroborating evidence, counsel furnished four medical letters written in Spanish from physicians based in Cuidad Juarez, Mexico, who specialize in internal medicine, general medicine and radiology. The certified English translations of the medical letters appear to document the applicant's

spouse's symptoms, examinations, and treatment plans. The AAO has carefully reviewed the medical documentation in the record and finds that they contain medical jargon that fails to relay the applicant's medical condition and how it affects his activities of daily life. Further, the applicant does not explain in his affidavit how his medical condition is affecting his daily life activities. Nor does it convey the type of assistance he requires from the applicant and how he is currently managing without the applicant's presence in the United States. For these reasons, the AAO cannot conclude that the applicant has a medical condition that, in combination with other factors, would contribute to a finding of extreme hardship.

Furthermore, the applicant's spouse has not demonstrated that he would suffer extreme hardship if he accompanied the applicant to Mexico. 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 applicant's spouse has failed to describe any hurdles he and his children may suffer if he accompanied the applicant to Mexico. Specifically, he has not described any cultural or linguistic hurdles he and his children may encounter should they move to Mexico. Nor has he discussed any financial hurdles, such as finding employment and housing in Mexico. There is no indication in the record of where the applicant is currently residing in Mexico and her source of financial support. The AAO observes that the applicant's spouse's birth certificate reflects that his parents are from Mexico, indicating that he is likely familiar with the Mexican culture, and may have extended family members residing in the country. Furthermore, the medical documentation contained in the record indicates that the applicant's spouse is receiving medical treatment in Cuidad Juarez, indicating he would have access to heath care in 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 spouse 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.