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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: MEXICO CITY Date: MAR 1 8 2009

(CDJ 2004 640 365 relates)

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. 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 naturalized U.S. citizen and 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 reside with her husband and child in the United States.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated March 20, 2006.

On appeal, the applicant's husband, [redacted], claims he has suffered extreme hardship since his wife left the United States.

The record contains, *inter alia*: a copy of the marriage license of the applicant and her husband, Mr. indicating they were married on June 14, 2002; letters from a psychological evaluation for [redacted]; copies of medical records; copies of the couple's daughter's medical records; a letter from [redacted] employer; a copy of a line of credit for [redacted] 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:

> 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 February 2000 without inspection and remained until June 2000. She entered without inspection again in April 2001 and remained until April 2002. She entered without inspection a third time in April 2002 and remained until August 2004. The applicant, therefore, accrued unlawful presence for over one year. She now seeks admission within ten years of her 2004 departure. Accordingly, she 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). Hardship the applicant's child may experience is not a permissible consideration under the statute. *Id.* 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 he loves his wife and that being separated "is not an option." He states that he and the couple's daughter, who is three years old and was born in the United States, need the applicant's company and support. The applicant was their child's primary care taker when she lived in the United States and since the applicant departed, [redacted]s mother has been taking care of their daughter. Mr. [redacted] states that his mother must return to her own home soon. In addition, [redacted] claims he cannot move back to Mexico, where he was born, because he has lived in the United States since 1973, has no family remaining in Mexico, has a good job in the United States, and would be

unable to find a comparable job in Mexico. Furthermore, he states his daughter had surgery and must remain in the United States to continue receiving quality medical care, and claims that she would not have the same educational opportunities in Mexico as she would in the United States. *Hardship Statement by* [redacted], dated November 1, 2005; *Statement of Hardship by* [redacted] dated March 22, 2005.

A psychological evaluation in the record states that since his wife's departure in August 2004, [redacted] has experienced "constant worry, trouble sleeping, preoccupation, fear, fatigue, muscular tension, and nausea." The psychologist concludes that these symptoms are consistent with an Acute Anxiety Reaction. The psychologist also found that although [redacted] does not suffer from a depressive disorder at this point in time, "his condition would be at risk for this disorder as his separation from his wife becomes longer." *Confidential Psychological Evaluation by* [redacted], dated March 30, 2006, at 4.

Even assuming, without deciding, that [redacted] would suffer extreme hardship if he moved to Mexico to be with his wife, nonetheless, he has the option of staying in the United States. After a careful review of the record, there is insufficient evidence to show that he has suffered or will suffer extreme hardship if he were to remain in the United States without his wife. Regarding [redacted] psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record is based on a single interview the psychologist conducted with [redacted] on March 30, 2006. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Indeed, the psychologist's conclusions that [redacted] would be at risk of a depressive disorder and that [redacted] "would develop a Generalized Anxiety Disorder," *Confidential Psychological Evaluation by* [redacted] *supra*, seem speculative.

Although the AAO recognizes [redacted] will endure hardship by remaining in the United States, his situation is typical to individuals separated from their spouse 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).

Moreover, although counsel claims [redacted] underwent two leg surgeries, *Brief in Support of Waiver of Grounds of Inadmissibility* at 3, [redacted] fails to assert in either of his statements that he has any physical conditions for which he needs his wife's assistance. Similarly, although the Psychological Report and the applicant's brief claim that [redacted] has taken several trips to visit the applicant and has incurred babysitting expenses resulting in "significant financial strain," *Confidential Psychological Evaluation by* [redacted], *supra*, at 2-3; *Brief in Support of Waiver of Grounds of Inadmissibility* at 3, [redacted] does not explicitly make a financial hardship claim. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In any event, even assuming some economic hardship, 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).

To the extent the couple's daughter may have experienced hardship, as discussed above, the hardship the applicant's child experiences is not a permissible consideration under the statute. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). The AAO notes that [redacted] claim that his daughter "must be under medical control" is insufficiently documented in the record. Although there are copies of the child's medical records in the record indicating she had umbilical hernia repair, there is no indication whatsoever that she has any remaining medical issues. *See, e.g.,* [redacted], *Progress Note*, dated March 4, 2005 (stating that the child was "doing well" and that there were no other scheduled appointments for follow-up).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 she 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.