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

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: APR 2 1 2010

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).

Perry Rhew
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 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 a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated March 23, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted], indicating they were married on November 14, 2003; a copy of the birth certificate of the couple's U.S. citizen daughter; a letter and an affidavit from [redacted]; two letters from the couple's child's physician. 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:

> (i) In General - Any alien (other than an alien lawfully admitted for permanent residence) who -
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> . . . .
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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.
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> . . . .
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> (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 she entered the United States in December 1998 without inspection and remained until January 2006. The applicant accrued unlawful presence of over seven years. She now seeks admission within ten years of her 2006 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). An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) 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.

In this case, the applicant's husband, [redacted], states that he has been suffering extreme hardship because his wife and their four month old daughter are living in Mexico. According to [redacted], his daughter has bronchiolitis and requires medical treatment. In addition, [redacted] contends he was born in the United States and has lived in the United States his entire life. He states he has never worked or studied in Mexico. [redacted] claims he would not be able to financially support and raise his daughter in Mexico. Furthermore, [redacted] states he is depressed and has not been able to concentrate at work. *Affidavit of* [redacted] dated February 13, 2006; *Letter from* [redacted] dated January 6, 2006.

A letter from a health care professional in the record states that the couple's daughter, [redacted] has been diagnosed with "bronchiolitis which often impacts her breathing." *Letter from* [redacted] undated. A letter from [redacted] physician states that [redacted] bronchiolitis is a "condition [that] requires constant supervision under the care of a physician" and that requires "constant follow-up and treatment." *Letter from* [redacted] dated December 20, 2005.[1]

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

The AAO recognizes that [redacted] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. With respect to the couple's daughter's bronchiolitis, although the input of any healthcare professional is respected and valuable, the letters in the record do not sufficiently address the prognosis, treatment, or severity of the child's health condition and do not address how it would elevate the hardships [redacted] faces. In addition, the applicant has not addressed whether or not the couple's U.S. citizen daughter could live with [redacted] and continue with the medical care she was receiving in the United States for her condition. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed by the applicant's daughter and the impact of the child's health condition on [redacted]

To the extent [redacted] is depressed and unable to concentrate at work, there is insufficient evidence to show that his hardship is beyond what would normally be expected. There is, for example, no evidence from any mental health professional diagnosing [redacted] with depression or any other mental health condition, no letter or other documentation from his employer or a co-worker describing how his depression or lack of concentration has affected his work, or other evidence that [redacted] emotional hardship has become extreme due to separation from the applicant.

If [redacted] decides to stay in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, 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*

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[1] The record also contains a letter and medical records that are written in Spanish and have not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Consequently, these documents cannot be considered.

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).

Furthermore, regarding [redacted] claim that he cannot move to Mexico to be with his wife because he has lived in the United States his entire life and would be unable to financially support his family in Mexico, there is no evidence showing that any hardship [redacted] may experience would be beyond what would normally be expected. The record shows that [redacted] is currently twenty-nine years old and there is no indication in the record that he has any physical or mental health issues that would render his transition to living in Mexico an extreme hardship. Even assuming [redacted] would suffer some economic hardship were he to move to Mexico, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *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).

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.