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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [REDACTED] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: AUG 03 2009
CDJ 2004 654 260

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 27-year-old 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 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. The applicant is married to a citizen of the United States, and she seeks a waiver of inadmissibility under 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 children in the United States.

The District Director found that the applicant failed to establish extreme hardship to her spouse, and denied the application accordingly. *Decision of the District Director*, dated June 5, 2006. On appeal, the applicant's husband, [REDACTED], contends that the denial of the waiver imposes extreme hardship on him and his family. *See Form I-290B, Notice of Appeal*, dated June 30, 2006.

The record contains, *inter alia*, a copy of the couple's marriage certificate, indicating that they were married on June 15, 2001, in Chula Vista, California; copies of the birth certificates for the couple's two U.S. citizen children; a letter and a declaration from the applicant's husband discussing some of the hardships imposed on him as a result of family separation; a letter from Licensed Psychologist [REDACTED] dated December 27, 2005; a Confidential Psychosocial Evaluation, conducted by [REDACTED], on June 30, 2006; two medical prescriptions; a letter from [REDACTED], dated December 21, 2005; copies of loan documents and homeowners policy documents; a letter from [REDACTED] employer, dated June 28, 2005; family photographs; a letter from St. Jude's Shrine of the West, dated June 1, 2005; and evidence of medical insurance for Mr. [REDACTED], showing medical coverage for his wife and children. The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(9)(B) of the Act provides:

(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 [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.

8 U.S.C. § 1182(a)(9)(B).

The record shows that the applicant entered the United States without being inspected and admitted in or around November, 2000. *See Form I-601, Application for Waiver of Ground of Excludability*, filed July 6, 2005; *Decision of the District Director, supra* at 2. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on May 12, 2003, and USCIS approved the petition on May 15, 2004. *See Form I-130, Petition for Alien Relative*. The applicant departed the United States in June, 2005. *See Form I-601, supra*. The applicant's unlawful presence for one year or more after April 1, 1997, and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).¹

In order to obtain a section 212(a)(9)(B)(v) waiver, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawfully resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (omitting consideration of hardship to the applicant and to his or her children). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she accompanies the applicant to the home country, and in the event that he or she remains in the United States. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is 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 non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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

¹ The District Director erred in characterizing the ground of inadmissibility in section 212(a)(9)(B)(i)(II) of the Act as a "permanent bar to admission." *See Decision of the District Director, supra* at 3. Rather, departure after unlawful presence of one year or more triggers a ten-year bar to admission. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(II).

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. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse is a 32-year-old native and citizen of the United States. *See Birth Certificate for* [REDACTED]. The applicant and her husband have known each other since 1999, *see Declaration of* [REDACTED], *supra*, and have been married for eight years, *see Marriage Certificate*. The couple’s daughter [REDACTED] was born in 2001 in San Diego, California, and she lives with her father in the United States. *See Birth Certificate for* [REDACTED]. *Letter from* [REDACTED], *supra*. The couple’s daughter [REDACTED] was born in 2002 in San Diego, California, and she lives with her mother in Mexico in the home of Mr. [REDACTED] parents. *See Birth Certificate for* [REDACTED]. *Letter from* [REDACTED], *supra*; *Confidential Psychosocial Evaluation, supra*. The family is reunited on weekends when Mr. [REDACTED] travels to Tijuana to be with his wife. *See Confidential Psychosocial Evaluation, supra*.

The applicant's spouse asserts that he is suffering extreme psychological hardship as a result of the separation from his wife. *See Form I-290B, Notice of Appeal, supra; Letter from [REDACTED], Declaration of [REDACTED]*.

In support of the hardship claim, the applicant's husband states that "the thought of losing [his] home and having to live apart from [his] wife and younger child has been causing [him] great amounts of distress." *Letter from [REDACTED] supra.* Mr. [REDACTED] notes that his wife and children are the priority in his life, and as a family man, he "depends on the moral support that [his] wife provides." *Id.; Declaration of [REDACTED] supra.* The applicant's husband also claims emotional hardship based on the impact of the separation on his children, who "are showing emotional distress." *Letter from [REDACTED], supra.* Mr. [REDACTED] states that the applicant is "the primary care giver to [their] young children who depend on [their] mother." *Declaration of [REDACTED], supra.* As a result of the family separation, [REDACTED] claims that his youngest daughter "is exhibiting withdrawal, aggressiveness towards others and a lack of appetite," and his older daughter has "become shy and at times sad due to the absence of her mother and younger sister." *Letter from [REDACTED], supra.*

[REDACTED] claims of emotional hardship are supported by a December 2005 letter from a licensed psychologist who states that [REDACTED] "has been feeling depressed, hopeless, and lonely." *Letter from [REDACTED], supra.* The psychologist noted that [REDACTED] "mood is anxious, his productivity at work has diminished, he has difficulty concentrating, and staying on task." *Id.* Further, the applicant's husband "is unable to interact with friends or co-workers due to child care problems, therefore he is isolating, and creating more distress in his life." *Id.* The psychologist concludes that [REDACTED] "needs psychological help and needs to be in treatment to manage his distress." *Id.* In June 2006, [REDACTED] "requested psychological assistance due to his intense anxiety and depressive reactions and consequent work problems reportedly presented as a result of his separation from his wife . . . and his younger . . . child." *Confidential Psychosocial Evaluation, supra.* [REDACTED] reported "feeling constantly tired . . . being unable to concentrate, having difficulty falling asleep, having bouts of gastritis," and stated that he has given up playing soccer, going out with friends, and has lost his appetite. *Id.* The psychologist diagnosed [REDACTED] with "typical symptoms of a depressive mood disorder with anxiety features apparently as a result of the intense duress, stress, and trauma resulting from the family breakup." *Id.* It was recommended that Mr. [REDACTED] "undergo personal counseling to deal with the presenting symptoms," and that the entire family "participate in family counseling sessions." *Id.* The record also contains medical prescriptions for Paxil and for Cimetidine.

The applicant's spouse has presented evidence regarding the extreme psychological hardship imposed by family separation. *See Letter from [REDACTED], supra; Declaration of [REDACTED], supra; Letter from [REDACTED], supra; Confidential Psychosocial Evaluation, supra.* The evidence shows that the effect of working full time and caring for a young daughter as a single parent has resulted in hardships that go beyond the norm.

However, the applicant's husband has not provided any evidence regarding the hardships that he would suffer if he were to relocate to Mexico to live with the applicant. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (setting forth list of relevant hardship considerations). For instance, the record is silent regarding [REDACTED] family ties to U.S. citizens or lawful permanent residents in the United States, and it appears that his parents reside in Mexico. *Id.* Further, there is no evidence in the record regarding country conditions in Mexico, the financial consequences of departure, or any significant health conditions that would be impacted by relocation. *Id.* Given the applicant's husband's equities in the United States, it appears that relocation to Mexico could cause difficulties. However, the applicant did not present any evidence regarding these potential hardships, and these factors cannot be considered. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (requiring supporting documentary evidence in order to meet the burden of proof in these proceedings).

In sum, although the applicant's spouse has presented evidence of extreme hardship based on family separation, the record does not contain sufficient evidence to show extreme hardship based on relocation. The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for an 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.