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

U.S. Citizenship and Immigration Services

H2

FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date: DEC 0 3 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

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).

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 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and children.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director,* dated December 11, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband will experience extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel*, received February 7, 2007.

The record contains a brief from counsel; statements from the applicant's husband; a copy of the applicant's marriage license; copies of birth records for the applicant's husband and children, and; information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

The record reflects that the applicant entered the United States without inspection in or about January 1996. She remained until she voluntarily departed in December 2005. Accordingly, the applicant accrued unlawful presence in the United States from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until December 2005, totaling over eight years. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant does not contest her inadmissibility on appeal.

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 applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

On appeal, counsel asserts that the applicant's husband will suffer extreme hardship should the applicant be prohibited from entering the United States. *Brief from Counsel* at 3-4. Counsel states that the applicant's family is being destroyed due to the fact that the applicant and their two children are residing in Mexico, and that family separation is causing them anxiety. *Id.* at 3. Counsel suggests that hardship to the applicant's children should be considered. *Id.* Counsel asserts that the applicant's husband is experiencing economic hardship due to supporting his household in the United States and the applicant's household in Mexico. *Id.* at 4. Counsel states that the applicant's husband has had to work extra hours so he can visit the applicant and their children in Mexico . *Id.*

Counsel asserts that the denial of the present waiver application "deprives [the applicant's husband] of the very essence of our constitution, his ability to have due process of free choice." *Id.* Counsel suggests that the district director did not carefully consider the facts of the present matter. *Id.*

The applicant's husband stated that family separation is causing him extreme hardship. *Statement from the Applicant's Husband*, dated January 9, 2006. He provided that he is supporting the applicant in Mexico because she does not work. *Id.* at 1. He explained that his children are struggling in Mexico due to the absence of opportunities offered in the United States. *Id.*

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is prohibited from entering the United States. The applicant has not shown that her husband will experience extreme hardship should he remain in the United States. The applicant's husband expressed that he will endure emotional hardship if he remains separated from the applicant and their children. However, the applicant has not distinguished her husband's emotional challenges from those commonly experienced when spouses reside apart due to inadmissibility. U.S. court decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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. *Hassan v. INS, supra,* held further that the 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.

The applicant's husband stated that he will suffer economic hardship due to the applicant's absence, as he must support the applicant in Mexico as well as meet his own needs in the United States. Yet, the applicant has not indicated whether she has job skills that she can use to seek employment, or provided an estimate of her expenses in Mexico. Nor has the applicant submitted an account of her husband's income or estimated expenses in the United States. Thus, the applicant has not provided sufficient explanation or evidence to show that her husband would face unusual expenses or financial hardship should he remain in the United States without her and their children.

The record contains references to hardships that will be experienced by the applicant's children. Direct hardship to an applicant's children is not a basis for a waiver under Section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. The AAO recognizes that the applicant's children will face challenges should they continue to reside in Mexico and remain separated from their father. However, the applicant has not articulated specific hardships they will encounter or otherwise shown that they will face unusual circumstances that raise the applicant's husband's emotional hardship to extreme hardship.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he remain in the United States without her.

The applicant also has not asserted or shown that her husband will suffer extreme hardship should he relocate to Mexico to maintain family unity. In the absence of clear assertions from the applicant, the AAO may not speculate regarding hardships the applicant's husband may face. In proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the applicant has not shown that her husband will suffer extreme hardship should he relocate to Mexico.

Counsel asserts that the denial of the present waiver application "deprives [the applicant's husband] of the very essence of our constitution, his ability to have due process of free choice." *Brief from Counsel* at 4. However, counsel has not clearly discussed how the applicant's husband's constitutional rights have been compromised, or cited precedent decisions to support her assertion. Thus, counsel's claim that the Constitution has been violated is not persuasive.

Counsel suggests that the district director did not carefully consider the facts of the present matter. However, it is noted that the applicant has provided little evidence to support that her husband will experience extreme hardship. Such evidence is limited to two brief, general statements from the applicant's husband and a statement from counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. 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). The AAO finds that the district director sufficiently referenced the evidence of record to show that it was considered. The AAO has again considered all of the evidence submitted initially and on appeal. Thus, the applicant has not been prejudiced by a failure to examine all facts and evidence presented.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he join her in Mexico or remain in the United States. Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver under section 212(a)(9)(B)(v) of the Act. 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.

As noted above, in proceedings for an application for a waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.