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FILE: [REDACTED] Office: NEW YORK, NEW YORK Date: NOV 13 2009

IN RE: [REDACTED]

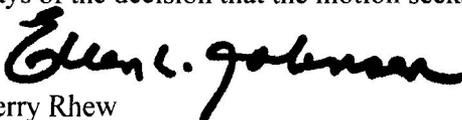
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a Lawful Permanent Resident and is the derivative beneficiary of an approved *Immigrant Petition for Alien Worker*. The applicant initially entered the United States with a B-1 visa on August 4, 1998 with permission to remain in the United States until November 3, 1998. The applicant remained in the United States after her authorized stay expired and filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on August 27, 2003. She departed the United States on several occasions from 2002 to 2008 and reentered with an Advance Parole document. 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 remain in the United States with her spouse and children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of District Director* dated June 4, 2009.

On appeal, counsel asserts that the applicant has met her burden of establishing extreme hardship to her Lawful Permanent Resident spouse, and the facts of her case can be distinguished from cases relied upon by U.S. Citizenship and Immigration Services (USCIS) in denying the waiver application. *See Counsel's Brief in Support of Appeal* at 1-2. Specifically, counsel states that the applicant's husband would suffer hardship if the applicant were removed from the United States and separated from their children, and USCIS erred in failing to consider the emotional hardship that would result from the suffering of the children as well as emotional and financial hardship due to having to care for the children on his own. *Counsel's Brief in Support of Appeal* at 2. Counsel further asserts that the applicant's husband is suffering from depression and has considered suicide since the applicant's waiver application was denied. *Counsel's Brief in Support of Appeal* at 3. Counsel additionally claims that the applicant's husband suffers from medical problems and relies on the applicant to take care of him and ensure he attends doctor's appointments and follows a healthy diet, and asserts that his condition would worsen in the foreseeable future without the applicant's assistance. *Id.* In support of the waiver application and appeal, counsel and former counsel submitted a declaration from the applicant's husband, a psychological evaluation of the applicant's husband, a note from the applicant's husband's doctor, school records for the applicant's children, records of donations to the applicant's church, and a copy of the applicant's passport and travel documents. The entire record was reviewed and considered in arriving at 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 –

- (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 Secretary, 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 AAO notes that the record contains several references to the hardship that the applicant's children would suffer if the waiver application were denied. Section 212(a)(9)(B)(v) of the Act provides that a waiver of section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. The applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), 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 is forty year-old native and citizen of China who has resided in the United States since August 4, 1998, when she was admitted as a B-2 visitor. She remained in the United States after her authorized stay expired on November 3, 1998, and is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from November 3, 1998 to August 27, 2003, when she filed an Application to Register Permanent Residence or Adjust Status. The record further reflects that the applicant's husband is a native and citizen of China who has been a Lawful Permanent Resident since January 10, 2005. The applicant and her husband live in New City, New York with their two children.

Counsel asserts that since learning that the applicant's waiver application had been denied, her husband "was immediately plunged into despair" and had difficulty eating and sleeping to the point that he lost more than twelve pounds in two weeks. *Brief* at 3. In support of this assertion, counsel submitted a psychological evaluation of the applicant's husband conducted on June 23, 2009. The evaluation states that the applicant's husband was experiencing a Major Depressive Disorder, Single Episode, Severe Without Psychotic Features, that was precipitated by the denial of the applicant's waiver application. *See Psychological Evaluation from* [REDACTED] dated June 23, 2009. [REDACTED] additionally states that the applicant's husband himself has no psychiatric history, but his older sister has a "long history of depression with two psychiatric hospitalizations due to suicidal ideations and one suicide attempt." *See Psychological Evaluation from* [REDACTED]. The evaluation states that the applicant's husband was immediately referred to a psychiatrist for antidepressant medication and that he was prescribed Sertraline and Lorazepam. *Psychological Evaluation from* [REDACTED] Dr. [REDACTED] states that weekly psychotherapy as well as the psychiatric medications are recommended and further states, "Given his family psychiatric history, it is also recommended that the patient be evaluated for suicide risk in follow-ups." *Id.* According to the evaluation, the applicant's husband began to experience symptoms of depression after the waiver application was denied and states that although he did not have any current suicidal plans, he had had "intermittent suicidal ideations" in the two weeks between the denial of the application and the evaluation.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The report from the psychologist who evaluated the applicant's spouse indicates that as a result of the denial of the applicant's waiver application, her husband began experiencing symptoms of severe depression and was being treated with medication with weekly psychotherapy also recommended. The evidence on the record indicates that the applicant's husband's condition is potentially serious and that he would suffer extreme hardship if he were separated from the applicant, on whom he relies to care for him and his two small children. The evaluation further states that the applicant has a family history of severe depression and a close relative who had attempted to commit suicide, and that he was also having suicidal thoughts, and recommends he be evaluated for suicide risk. It appears that the depression the applicant's husband is experiencing, in light of his family history, is more serious than the type of hardship a family member would normally suffer when faced with his spouse's deportation or exclusion. Further, in his declaration the applicant's husband states that he relies on the applicant's income to help support the family and they could not maintain an adequate standard of living on his income alone. It appears that in light of his psychological condition and family history of mental illness, the emotional hardship to the applicant's husband resulting from being separated from the applicant, combined with the financial hardship due to the loss of her income, would

amount to hardship that is unusual or beyond that which would normally be expected upon deportation or exclusion if he remains in the United States.

The applicant's husband states that his children have adjusted to life in the United States and could not go back to China with the applicant, which would force the family to face separation. *See Declaration from* [REDACTED] dated April 17, 2009. The psychological evaluation of the applicant's husband states that he does not want to go back to China and he has no resources there to raise his children, and further states that it is unlikely he will receive psychiatric treatment in China if he relocates there because mental illness is stigmatized and care for the mentally ill is "poor and often inappropriate." *See Psychological Evaluation from* [REDACTED]. Although [REDACTED] states that adequate psychiatric care would be unavailable in China, no evidence was submitted to support this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The psychiatric evaluation further indicates that the applicant's husband began to suffer from depression when the applicant's waiver application was denied and he stated that he did not want to live without his wife and was very dependent upon her for his care and the care of his two children. *See Psychological Evaluation from* [REDACTED]. The evaluation recommends that the applicant be allowed to remain in the United States so that she can continue to care for her husband and children, and states that "his condition will further deteriorate without his wife's love and care." *Id.* It appears that the applicant's husband's depression was precipitated by the prospect of being separated from the applicant and having to raise his two children on his own, but the record does not contain sufficient evidence that he would suffer extreme psychological hardship if he relocated to China with the applicant. Further, there is no documentation on the record to support statements made in the psychological evaluation that the applicant's husband would be unable to support the family if they relocated to China, and there is no indication that the applicant's husband, who was born in China and resided there until he was forty years old, has any other family ties to the United States that would be severed if he returned to China. The AAO additionally notes that the applicant, who has traveled to China seven times for a period of a month or more since 2002, including two visits in 2008, maintains strong ties to China, which undermines the claim that the family would have no resources there after residing in the United States for ten years. Further, even though relocating to China would likely have a negative impact on the financial situation of the applicant's husband, it appears that this is the type of hardship to be expected as a result of deportation or exclusion. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (finding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The record reviewed in its entirety does not support a finding that the applicant's spouse faces extreme hardship if the applicant is removed from the United States and he relocates to China with her. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The emotional and financial difficulties that the applicant's husband would suffer appear to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was

unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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 application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.