

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

H<sub>2</sub>



FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **NOV 18 2009**  
(CDJ 2004 751 582)

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:

SELF-REPRESENTED

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, 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, Mexico, and 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 resided in the United States from July 1995, when she entered the country without inspection, to December 2005, when she returned to Mexico to apply for an immigrant visa. She 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)(B)(i)(II), for having been unlawfully present for a period of one year or more. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. She 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 return to the United States and reside with her husband.

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 the District Director* dated December 11, 2006.

On appeal, the applicant's husband asserts that he and the applicant are suffering emotional hardship due to their separation and he was shocked and depressed when he learned the waiver application had been denied. *See Letter from* [REDACTED] dated January 2, 2007. He further states that he cannot live in Mexico with the applicant because he does not speak Spanish and would be unable to find employment there and support the applicant and his mother when she can no longer work. *Letter from* [REDACTED] In support of the waiver application and appeal, the applicant submitted letters from her husband, sister, and mother-in-law; letters from psychologists who evaluated her and her husband; medical records for her mother-in-law; and documentation of her mother-in-law's income. 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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

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. In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.)

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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 *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. Moreover, the U.S. Supreme Court 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.

In the present case, the record reflects that the applicant is a thirty-seven year-old native and citizen of Mexico who resided in the United States from July 1995, when she entered without inspection, until December 2005. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from April 1, 1997, the date section 212(a)(9)(B) of the Act entered into effect, to December 2005. The applicant's husband is a thirty-seven year-old native and citizen of the United States. The applicant currently resides in Tijuana, Mexico and her husband resides in Chino, California.

The applicant's husband states that he is suffering emotional hardship due to separation from the applicant and he and the applicant need to be together. He states that he and the applicant are **devastated by the situation** and have both seen a doctor because of their depression. *Letter from* [REDACTED] dated January 2, 2007. In support of these assertions the applicant submitted a letter from a psychologist who evaluated the applicant's husband in California and a letter from a psychologist who evaluated the applicant in Tijuana, Mexico. The letter from clinical psychologist [REDACTED] states that she "met with [REDACTED] today to discuss his current marital situation." and that she administered the Beck Depression Inventory-II. *Letter from* [REDACTED] dated December 18, 2006. The letter states that the applicant's husband indicated he suffered from several symptoms of depression and that his score fell within the range of severe depression. *Id.*

The input of any mental health professional is respected and valued in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a psychological evaluation of the applicant's husband, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or any history of treatment for depression. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight that would result from an established relationship with the psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Further, there is no evidence submitted with the waiver application or appeal that [REDACTED] or any other mental health professional provided any follow-up treatment, despite the diagnosis of severe depression.

The applicant's husband states that he is suffering emotional hardship due to separation from the applicant. The evidence on the record is insufficient to establish that any emotional difficulties he is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's exclusion or removal. Although the depth of his distress caused by separation from his wife is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant's husband states that he would be unable to maintain two households, including paying for rent, food, and utilities, for the next ten years and that he and the applicant must both work "to secure their future and take care of their family." *Letter from* [REDACTED] dated January 2, 2007. No documentation of the applicant's husband's income or the family's living expenses was submitted to support the assertion that maintaining two households is causing financial hardship. 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)).

Further, there is no indication that there are any ongoing unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of separation from the applicant. Any financial impact of maintaining two households therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's husband asserts that if he relocated to Mexico he would be unable to support his family because he does not speak Spanish and he would not find work in his field of construction because there is a different style of construction in Mexico. *Letter from* [REDACTED] dated January 2, 2007. No evidence was submitted to support these assertions, such as documentation concerning conditions in Mexico or information on construction in Mexico. Although relocating to Mexico would likely pose some hardship for the applicant's husband, as noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. The evidence on the record is insufficient to establish that the financial impact of relocating to Mexico would rise to the level of extreme hardship for the applicant's husband. *See also INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant states that he would be unable to find a decent job in Mexico to support the applicant and his mother when the time comes that she can no longer work. The applicant's mother-in-law states that she suffers from various medical conditions, including heart ailments, back problems, a subnormal liver, and a fungus in her bloodstream, all of which have left her with a weakened immune system. *Letter from* [REDACTED] dated December 19, 2006. She further states that although she is working, she does not have a sufficient pension or other resources to support herself when she retires, and would rely on the applicant and her husband for support if she were unable to work. *Id.* In support of these assertions, the applicant submitted medical records for her mother-in-law, including laboratory results, MRI results, an electrocardiogram result, and physician's notes.

The emotional effects of a significant condition of health of a close relative on a qualifying relative, 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 evidence on the record is insufficient to establish, however, that the applicant's mother-in-law suffers from such a condition that would result in emotional hardship to the applicant's husband should he relocate to Mexico. The record includes medical records for the applicant's mother-in-law, including laboratory and test results prepared for review by a medical professional and handwritten notes that are illegible or contain medical terminology and abbreviations that are not easily understood. Without more detailed information, such as a letter from her physician describing the nature and seriousness of any diagnosed condition, the prognosis for recovery, and any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed.

The evidence on the record is insufficient to establish that any emotional or financial hardship the applicant's husband would experience is other than the type of hardship that a family member 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 any 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 U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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. 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.