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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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**NOV 17 2009**

FILE: [REDACTED] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date:  
CDJ 2004 843 537

IN RE: [REDACTED]

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

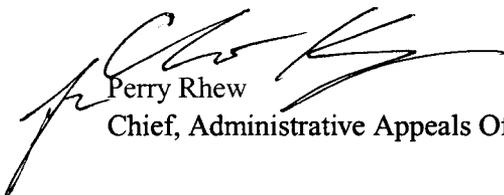
ON BEHALF OF APPLICANT:

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 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, 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 he 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 his wife and children in the United States.

The District Director found that the applicant failed to establish extreme hardship to his spouse, and denied the application accordingly. *Decision of the District Director*, dated January 2, 2007. On appeal, the applicant's wife, [REDACTED], contends that the denial of the waiver imposes extreme hardship on her and her children. *See Form I-290B, Notice of Appeal*, dated January 8, 2007.

The record contains, among other things, several letters from the applicant's wife discussing the hardships imposed on her as a result of family separation. The entire record was reviewed and considered in rendering this decision on 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 [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 shows that the applicant entered the United States without being inspected and admitted in or around November, 1998. *See Form I-601, Application for Waiver of Ground of Inadmissibility; Decision of the District Director, supra* at 2. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on June 8, 2004, and U.S. Citizenship and Immigration Services approved the petition on December 2, 2004. *See Form I-130, Petition for Alien Relative*. The applicant departed the United States in February, 2006. *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).<sup>1</sup>

In order to obtain a section 212(a)(9)(B)(v) waiver for unlawful presence, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Under the plain language of the statute, 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.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family 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 in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

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. at 565. 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 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 565-66. 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).

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<sup>1</sup> 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).

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.

Although the record lacks supporting documentation, it appears that the applicant’s spouse is a 23-year-old native and citizen of the United States. *See Form I-130*. The applicant and his wife have been married for five years. *See id.* It also appears that the couple has two U.S. citizen children. *See Form I-601*.

The applicant’s spouse asserts that she is suffering extreme emotional, financial, and medical hardships as a result of the separation from her husband. Specifically, [REDACTED] claims that she misses the applicant because he “is the one who takes care of the family not just money wise but the one who is always there to help [her] with [her] kids.” *Letter from* [REDACTED] dated Mar. 20, 2006. Further, she feels “depressed knowing that he has to be away from [her] so long,” and “very sad for [her] kids.” *Id.* The applicant’s wife also claims that her income is not sufficient to pay for all of the family expenses, and that visits to Mexico are very expensive. *Id.* Additionally, [REDACTED] states that she and her son suffer from asthma, and that they “need medical attention, which was denied.” *Notice of Appeal*. Finally, [REDACTED] claims that the applicant is suffering in Mexico because he has not been able to obtain employment. *Id.*

The record does not support the claims of the applicant’s spouse. First, the record lacks evidence, such as tax records, financial documents, or detailed statements regarding the couple’s income and expenses, to support a claim of extreme financial hardship. Second, the record lacks supporting

evidence of the severity and treatment of [REDACTED] and her son's medical conditions. Third, although the emotional hardship based on family separation is evident from [REDACTED] letters, she did not provide medical records, probative testimony, or other evidence showing that the psychological hardships she faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Fourth, the applicant's hardships in Mexico, as well as the hardships suffered by the applicant's children, are not considered in the extreme hardship calculation, except to the extent that these hardships affect the applicant's wife. *See* 8 U.S.C. § 1182(a)(9)(B)(v). The applicant has not submitted sufficient evidence to show that his situation in Mexico, or the emotional or medical conditions of their children, are significantly affecting the difficulties the applicant's wife faces in his absence. Finally, although the applicant's wife implies that relocation to Mexico would cause extreme hardship, the record lacks detailed testimony or documentation regarding conditions in Mexico or other evidence to support this allegation. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566 (setting forth relevant factors, including 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 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).

In sum, although the applicant's spouse claims hardship based on family separation or relocation, the record does not contain sufficient evidence to support these allegations. Further, it does not appear that the difficulties alleged would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.