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

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FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO
CDJ 2004 802 367 (relates)

Date: **OCT 01 2009**

IN RE: Applicant: [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:

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 Officer in Charge (OIC), Ciudad Juarez, 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 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 and seeking readmission within 10 years of her last departure from the United States. The record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 reside in the United States with her United States citizen husband and children.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated January 23, 2007.

On appeal, the applicant, through counsel, claims that "the impact of [the applicant's] separation from [the applicant's husband] rises to the level of 'extreme hardship'." *Form I-290B*, filed February 23, 2007.

The record includes, but is not limited to, statements from the applicant's husband and a letter from [REDACTED] regarding the applicant's son's medical conditions. 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:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
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 - (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 AAO notes that the record contains references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant entered the United States in April 2000 without inspection. On August 19, 2004, the applicant's husband filed a Form I-130 on behalf of the applicant. On September 20, 2004, the applicant's Form I-130 was approved. On February 12, 2006, the applicant departed the United States. On March 10, 2006, the applicant filed a Form I-601. On January 23, 2007, the OIC denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from April 2000, the date the applicant entered the United States without inspection, until February 12, 2006, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her February 12, 2006 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

In a sworn statement dated February 20, 2007, the applicant's husband states that "[s]ince [the applicant] left the United States...[he] [has] become sick with depression and [he] [is] on medication for anxiety and sleep disorder." The AAO notes that there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any depression or anxiety or whether any depression and anxiety is beyond that typically experienced as a result of the removal and/or inadmissibility of a family member. Additionally, the AAO notes that there was no medical documentation submitted establishing that the applicant's husband suffers from any medical conditions. The applicant's husband states he worries about the applicant and his children "who are continually being treated for digestive illness." In a letter dated February 7, 2007, [REDACTED] states he treated the applicant's son, [REDACTED], for bacterial gastroenteritis, parasites, and a respiratory problem. The AAO notes that [REDACTED] states the applicant's son was successfully treated with medication; therefore, there is no indication that the applicant's son could not receive treatment for his medical conditions in Mexico. In a statement dated February 11, 2006, the applicant's husband states his son, [REDACTED], receives speech therapy in the United States. The AAO notes that there was no documentation submitted establishing that the applicant's son could not receive speech therapy in Mexico. Additionally, the AAO notes that the applicant's children may be experiencing some hardship in relocating to Mexico; however, the applicant's children are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act. The applicant's husband states he could not find work in Mexico; however, the AAO notes that it has not been established that he has no transferable skills that would aid him in obtaining a job in Mexico. Additionally, the AAO notes that it has not been established that the applicant's husband has no family ties in Mexico. In fact, the applicant's husband states his parents reside in Mexico. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined her in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states his older son will be returning to the United States to live with him but he does not know how he will be able to provide child care because he works everyday. The AAO notes that it has not been established that the applicant's spouse is unable to provide or obtain adequate care for his son in the applicant's absence or that this particular hardship is atypical of individuals separated as a consequence of removal or inadmissibility. Additionally, the AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States court decisions have repeatedly 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 Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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.

In proceedings for application for 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.