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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: OCT 22 2009
(CDJ 2004 799 205)

IN RE: [REDACTED]

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

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. 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. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. He 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 to join his U.S. citizen wife and their daughter.

The district director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated December 17, 2006.

On appeal, the applicant asserts that his family will lose their house and fall into poverty if he is not allowed to return to the United States. *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*. In addition to copies of documents previously filed, the applicant submits copies of bills for automobile insurance, mortgage statements and medical care; documentation of a home equity loan secured by the applicant's wife; and a letter from her physician. The entire record was reviewed and considered in rendering this decision.

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 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.

To be eligible for this waiver, applicants must demonstrate that the bar to their admission would cause extreme hardship to a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Hardship to the applicants themselves or to their children is not relevant under the statute and is considered only as it results in hardship to a qualifying relative in the application. *Id.*

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). Extreme hardship requires significant hardships over and above the normal economic and social disruptions involved in the separation of family members due to deportation or exclusion. *Matter of Pilch*, 21 I&N Dec. 627, 633 (BIA 1996). *See also Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (to be considered extreme, hardship must be unusual or beyond that which would normally be expected upon deportation). For example, the emotional difficulty caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. at 631 (BIA 1996). In addition, financial detriment alone will not establish extreme hardship. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citing *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978)). *See also INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (finding no abuse of discretion in the BIA's determination that the mere showing of economic detriment to qualifying family members did not demonstrate extreme hardship).

However, extreme hardship is not a term of "fixed and inflexible meaning, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) has set forth a nonexclusive list of factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative. These factors include: family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside of the United States; the conditions in the country where the qualifying relative would relocate and the extent of the qualifying relative's ties to 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. *See id.* at 565-66 (and cases cited therein). These factors are not examined in isolation because "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996).

The record in this case provides the following, relevant facts. The applicant was born in 1972 in Mexico and entered the United States without inspection in July 1992. His wife was born in the United States in 1980. The couple's daughter was born on November 29, 2001 in the United States. The couple married on April 11, 2003 in Michigan and resided there together until the applicant returned to Mexico in 2006 for an immigrant visa interview. At that time, the applicant's wife was eight months pregnant. On appeal, the applicant states that his wife gave birth to their second child, a boy, in April 2006, but no documentation of the child's birth, such as his birth certificate, was submitted.

In her undated letter submitted below, the applicant's wife stated that she needed her husband to return to see the birth of their son and help her with their children. Without her husband, the applicant's wife claimed, she would not be able to pay their monthly bills and mortgage. On appeal, the applicant states that although his wife works, "she is not able to make the housepayments along with all the bills when she is also paying for childcare for 2 children." *Form I-290B*. The applicant adds that they are behind in their payments, could lose their house and that he is unable to support his wife and children because he is only earning eight dollars a day in Mexico. *Id.*

The documents submitted on appeal do not support the applicant's assertions. The insurance and mortgage statements show that the applicant's wife was able to pay those bills, including the assessed late charges, after the applicant's departure. The applicant's wife had one hospital bill dated April 22, 2006 for \$1,017 that was referred to a collection agency, but she also secured a home equity loan of \$15,725 on September 29, 2006. In sum, the relevant evidence does not establish that the financial impact of the applicant's departure has caused insurmountable or otherwise extreme economic difficulties for his wife in the United States. The applicant also failed to submit any evidence of his income in Mexico and his purported inability to support his family in that country.

On appeal, the applicant states that his wife could not accompany him to his visa interview in Mexico due to an unspecified "medical condition." *Form I-290B*. The applicant's wife was in the final trimester of her pregnancy with the couple's second child at the time of her husband's interview and her physician advised that she "not travel for her & her unborn child's safety." *Letter of [REDACTED]*, dated February 27, 2006. While the record thus documents her inability to join the applicant in Mexico at the time of his interview in March 2006, the record lacks evidence that the applicant's wife had any complications with the pregnancy or birth of the couple's son that would have prevented her from joining the applicant in Mexico after their son's birth in April 2006. The record also does not indicate that the applicant's wife or either of the couple's children has any significant illness or medical condition that would increase the difficulties the applicant's wife faces in the United States, or for which they could not find adequate care in Mexico.

The applicant's final assertion on appeal is that his wife needs his emotional support because she is by herself with their two young children and they have no other close relatives in the United States. However, such emotional difficulty is a common result of deportation or exclusion and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. at 631. In addition, the applicant and his wife do not discuss whether they have any relatives in Mexico and whether they would be able to live there together.

While we acknowledge the emotional and financial toll that the applicant's departure has taken on his wife, the record as a whole fails to demonstrate that the applicant's wife would suffer extreme hardship if he is refused admission to the United States. The relevant evidence does not demonstrate that the economic and emotional difficulties faced by the applicant's wife, considered in the aggregate, extend beyond the common results of an alien's inadmissibility and rise to the level of extreme hardship. Consequently, the applicant has failed to establish extreme hardship to his qualifying relative, as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

When extreme hardship to a qualifying relative is demonstrated, U.S. Citizenship and Immigration Services (USCIS) will assess whether an exercise of discretion is warranted. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). As the applicant here has not established extreme hardship to his qualifying relative, we do not reach the issue of whether he merits a waiver of inadmissibility as a matter of discretion.

The applicant bears the burden of proof in these proceedings to establish his eligibility for a waiver of inadmissibility. *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.