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

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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: OCT 28 2009
(CDJ 2004 815 060 relates)

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the 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 District Director, Mexico City. The matter 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 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 naturalized U.S. citizen and 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 with his wife and child in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated November 13, 2006.

The record contains, *inter alia*: a letter from the applicant's wife, a letter from [REDACTED] physician and copies of her medical records; a letter from the couple's child's physician; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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 -

....

(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 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.

In this case, the district director found, and counsel does not contest, that the applicant unlawfully entered the United States in March 1999 and remained until January 2006. The applicant accrued unlawful presence from April 19, 1999, the date the applicant turned eighteen years old, until his departure from the United States in 2006. He now seeks admission within ten years of his 2006 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more.

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 U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These 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.

It is not evident from the record that the applicant's spouse has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

In this case, according to the applicant's attorney, [REDACTED] has been diagnosed with "Pseudoseizures," a condition that purportedly "requires that she be monitored continuously to evaluate whether the seizures have affected her level of awareness, memory or feelings." [REDACTED] is also "suffering extreme hardships without the emotional, financial, and physical presence of her husband." In addition, the couple's one-year old child, [REDACTED] "has a small hemangioma of the right upper eye lid that requires the doctor to continually evaluate if it is not growing." *Letter from* [REDACTED] undated.

A letter from [REDACTED] physician states that [REDACTED] has been a patient since Mary 24, 1999, and has been treated for "several ailments, including headaches, upper respiratory infections, dizziness, and most recently gastrointestinal bleeding." Her physician states that at her last visit, in November 2006, she was recommended for further testing and possibly a colonoscopy to evaluate her gastrointestinal bleeding, which will require follow-up care. *Letter from* [REDACTED] dated December 7, 2006. Copies of [REDACTED] medical records indicate she had blood in her stool for four

days in November 2006. In addition, a copy of [REDACTED] medical records from October 2002 indicate she was diagnosed with headaches and pseudoseizures.

A letter from [REDACTED] physician states that [REDACTED] has “a small hemangioma of the right upper eyelid[, and] also has astigmatism in each eye,” requiring evaluation every six months. *Letter from* [REDACTED] dated November 30, 2006.

After a careful review of the record evidence, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if her husband’s waiver application were denied. Although there is a letter from [REDACTED] in the record, the letter is written in Spanish and has not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. Accordingly, there are no statements from either the applicant or his wife addressing extreme hardship.

To the extent counsel contends [REDACTED] is suffering extreme hardship emotionally, financially, and physically, *Letter from* [REDACTED] *supra*, there is insufficient evidence the level of hardship rises to the level of extreme hardship. Although the AAO recognizes [REDACTED] has suffered hardship as a result of her husband’s departure from the United States and is sympathetic to the family’s circumstances, the Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

Regarding the financial hardship claim, although the record contains copies of checks written by the applicant and his wife, there is no evidence addressing to what extent, if any, the applicant helped to support the family while he was in the country. There are no tax documents in the record, no evidence from employers verifying the applicant’s past or current employment, and no documentation regarding his wages. There is no evidence addressing the family’s regular monthly expenses, such as rent, mortgage, or day care expenses. Without more detailed information, the AAO is not in the position to attribute any financial difficulties [REDACTED] may be experiencing to the applicant’s departure. In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

Finally, although the record shows [REDACTED] has been diagnosed with pseudoseizures, notably, her physician, who has treated her for ten years since May 1999, fails to mention this condition altogether. Letter from [REDACTED] *supra*. There is no evidence [REDACTED] pseudoseizures affect her daily life, if at all, and there is no allegation she requires assistance, treatment, or medication because of it. Although the record shows that [REDACTED] has been treated for headaches, upper respiratory infections, dizziness, and gastrointestinal bleeding, aside from further testing and possibly a colonoscopy, the letter from [REDACTED] physician does not discuss the severity or prognosis for these conditions. Similarly, the letter from [REDACTED] physician fails to discuss the severity or prognosis for her hemangioma and astigmatism, stating only that [REDACTED]'s eye conditions need to be evaluated and monitored every six months. There is no allegation that any of these medical conditions could not be adequately monitored or treated in Mexico.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 he merits a waiver as a matter of discretion.

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. *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.