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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]
CDJ 2004 757 048

Office: MEXICO CITY (CIUDAD JUAREZ)

Date: OCT 28 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 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).

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, denied the instant waiver application. 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, the husband of a U.S. citizen, the father of at least one U.S. citizen child,¹ and the beneficiary of an approved Form I-130 petition.

The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife and child or children. The district director also found that the applicant had failed to establish that failure to approve the waiver application would cause extreme hardship to his U.S. citizen spouse, and denied the application.

On appeal, the applicant's wife submitted additional letters in support of the contention that to deny the waiver application would result in extreme hardship to her. Although the applicant's wife did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(9)(B)(i) of the Act provides:

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

On the Form I-130 Petition for Alien Relative the applicant's wife, who signed that petition on June 17, 2003, indicated that the applicant had entered the United States without inspection. On the Form I-601 waiver application, which the applicant and his wife both signed on October 1, 2005, they indicated that the applicant entered the United States without inspection during March 2000 and remained in the United States until November 2005.

¹ In a letters submitted on appeal, the applicant's wife stated that she and the applicant have another child. However, she submitted no evidence in support of that assertion.

On a Form DS-230 Application for Immigrant Visa and Alien Registration and a G-325A Biographic Information form, the applicant, who signed those forms on November 9, 2005 and November 14, 2005, respectively, stated that he had lived in Odessa, Texas since October 1999.

The record contains no evidence that the applicant ever attained any legal status in the United States. The Form I-601 in this case indicates that it was filed in Ciudad Juarez, Mexico on November 14, 2005 along with a visa application. This indicates that, by that date, the applicant had left the United States.

The evidence in the record is sufficient to show that the applicant was unlawfully present in the United States from March 2000 to November 2005, a period greater than one year, and that he has since left the United States. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] 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 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child or children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, 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 566. The BIA has held:

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The record contains a letter, dated October 1, 2005, from the applicant's wife. It states that to deny the waiver application would result in extreme hardship to her, to the son she and the applicant have, and to the unborn child they have. She stated that it would deny the son a close father/son relationship and ". . . would also financially devastate our family." She did not further detail the family finances.

Another letter, dated August 26, 2006, purports to be signed by the applicant and his wife and children, or perhaps on their behalf. It states that they need the applicant to return to the United States for both emotional and financial reasons, but does not further detail the emotional and financial hardship caused by his absence.

Another letter, which appears to have been received on October 1, 2006, purports to be signed by the applicant's wife and children, or on their behalf. In it, the applicant's wife stated, "I am so strested out my baby [REDACTED] was born premature & with a heart murmer. [Errors in the original.] She further stated that the applicant is missing out on his children growing up and that she needs diapers and various other items. She further stated, "Finacially [sic] we need help we are not making it."

The record contains another letter, dated January 16, 2007, from the applicant's wife. In it, she stated,

My kid really miss him. I can not afford to be traviling back and fourth I have to come to the U.S.A. to see my mom and dad & Doctor Appt. We go to Mexico to see [the applicant] it is getting harder and harder to say goodbye.

[Errors in the original.]

Although the applicant's wife has stated that she requires the applicant's financial help she provided no accounting of her income. Although she stated, in her October 1, 2005 letter, that she was providing copies of rent and utility bills, those bills are not in the record. The record does not contain a comprehensive list of the applicant's wife's recurring expenses. Without evidence

pertinent to the applicant's wife's income and expenses, and pertinent to the income the applicant would be able to provide, the AAO is unable to find that failure to approve the waiver application would cause hardship to the applicant's wife which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The applicant's wife stated that her younger child was born prematurely and has or had a heart murmur, which she attributes to the stress caused by the applicant's absence, and provided as evidence that the applicant's absence is causing her extreme hardship. She did not, however, state how early her child was born. She presented no medical evidence pertinent to the claimed heart murmur or premature birth, or to demonstrate that the cause was the applicant's absence.

Although the applicant's wife has indicated that she is experiencing emotional hardship by being separated from the applicant, she did not provide any supporting evidence from psychiatrists, psychologists, social workers, or similar professionals. Although separation from one's spouse almost certainly results in some degree of hardship, the record contains no credible assessment of the relative severity of the emotional hardship thus caused in this case. Further, the AAO notes that the applicant's wife stated that she visits the applicant in Mexico. The evidence does not demonstrate that the emotional hardship occasioned to the applicant's wife by his absence, when considered together with the other hardship factors in this case, rises to the level of extreme hardship. ■

The applicant's wife has stated that she must return to the United States to visit her parents and doctor. She provided no evidence, nor even argument, to show that she would be unable to travel to the United States as necessary to those purposes. Further, why the medical care in Mexico would be unavailable to her or insufficient to serve her needs and those of the family was not stated. Further still, whether her parents would be able to visit her in Mexico is not stated. The applicant's wife provided no other evidence that living in Mexico would occasion hardship to her. The applicant has not shown that, if the waiver application is denied, his wife will be unable to live with him in Mexico without encountering extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen wife as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.