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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [REDACTED] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: **OCT 29 2009**  
CDJ 2004 631 137

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 36-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 child 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 June 16, 2006. On appeal, the applicant's wife, \_\_\_\_\_ contends that the denial of the waiver imposes extreme hardship on her and her son. *See Form I-290B, Notice of Appeal*, dated July 18, 2006.

The record contains, *inter alia*, a copy of the couple's marriage certificate, indicating that they were married on February 16, 2003, in Los Angeles, California; a copy of the birth certificate for the couple's U.S. citizen son \_\_\_\_\_ a letter and a declaration from the applicant's wife discussing the hardships imposed on her as a result of family separation; a psychological evaluation of the applicant's wife, conducted by \_\_\_\_\_; a letter from the applicant's employer; and tax forms and earnings statements. The entire record was reviewed and considered in rendering this decision on appeal.

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

(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.

8 U.S.C. § 1182(a)(9)(B).

The record shows that the applicant entered the United States without being inspected and admitted in or around November, 1994. *See Form I-601, Application for Waiver of Ground of Excludability*, filed July 25, 2005; *Decision of the District Director, supra* at 2. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on April 3, 2003, and U.S. Citizenship and Immigration Services approved the petition on April 24, 2004. *See Form I-130, Petition for Alien Relative*. The applicant departed the United States in July, 2005. *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 lawfully resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). 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.* (omitting consideration of hardship to the applicant and to his or her children). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she accompanies the applicant to the home country, and in the event that he or she remains in the United States. 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).

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. 560, 565 (BIA 1999). 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 566. 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

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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).

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).

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.

The record reflects that the applicant’s spouse is a 28-year-old native and citizen of the United States. *See Birth Certificate for* [REDACTED]. The applicant and his wife have been married for six years. *See Marriage Certificate*. The couple’s son [REDACTED] was born in California in 2002. *See Birth Certificate for* [REDACTED]. The applicant’s spouse asserts that she has suffered extreme financial and psychological hardships as a result of the separation from her husband.

In support of the financial hardship claim, the applicant’s wife states that the applicant “was a financial provider, as well as a primary caregiver in our family.” *Letter from* [REDACTED]. [REDACTED] states that she became the sole provider for the family, and claims that she must financially support the applicant in Mexico “because he does not make enough to live on.” *Psychological Evaluation*; *see also Letter, supra*. The applicant’s wife also states that she may be required to search for alternative employment because the applicant is not here to care for her son while she works the swing shift, and she cannot afford a babysitter. *Id.* Finally, [REDACTED] claims that she had to sell her vehicle because of insufficient funds for repairs. *See Letter, supra*.

Tax records for the year 2005 show a combined family income of \$46,428. *See IRS Form 1040A (2005)*.

In support of the psychological hardship claim, the applicant's wife states that she suffered a miscarriage in January, 2006, and that she "had to endure that extremely emotional situation alone, while continuing to care for [her] son and work." *Letter, supra*. In her psychological evaluation, [REDACTED] reported "tremendous stress," difficulty concentrating, daily crying, nightmares, and fears based on her husband's reported anxiety and depression. *Psychological Evaluation*. She also stated that her son cries nightly, asking for his father, and the psychologist indicated that [REDACTED] "emotional distress was very obvious and noticeable." *Id.* The applicant's wife obtained scores in the "severe range" in the areas of depression and anxiety on the Beck Depression and Anxiety Inventories. *Id.* Further, the psychologist found:

Her results showed that she reported more problems than are typically reported by women aged 18 to 59, particularly problems of anxiety, withdrawal, somatic problems, thought problems, attention problems, aggressive problems, rule-breaking problems and intrusive problems. In fact, [REDACTED] Total Problems scale score was elevated in the clinical range, above the 98<sup>th</sup> percentile.

*Id.* The psychologist concluded that if "[REDACTED] stress and anxiety continue to be exacerbated by her inability to reunite with her husband, she will develop a Major Affective Disorder (DSM-IV Diagnosis: 296.22), many of the symptoms, she already meets." *Id.*

Although the record suggests that family separation causes emotional hardship to the applicant's spouse, the evidence presented is not sufficient to support a claim of hardship that rises 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. The AAO notes that although the input of any mental health professional is respected and valuable, the psychological report in the record is based on a single interview between the applicant's spouse and a psychologist, and the results of various self-report instruments. The record does not reflect an ongoing relationship between a mental health professional and the applicant's spouse, or any history of treatment for the reported anxiety and depression. As the BIA has found, the emotional hardships 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. 627, *supra*.

Further, the evidence regarding the couple's financial situation is insufficient to show that the denial of the waiver would result in extreme financial hardship. The record shows a joint income of \$46,428 in 2005, *see IRS Form 1040 (2005)*, and that the applicant's wife contributed \$40,897 to the family income, *see IRS Form W-2*. Although the applicant's wife expressed concern regarding her ability to meet family expenses, the record lacks supporting documentation regarding the couple's debts and other obligations. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (requiring supporting documentary evidence in order to meet the burden of proof). Because the applicant's spouse appears to be the primary wage earner, there is insufficient evidence to show that the denial of the waiver would rise to the level of extreme financial hardship. *See INS v. Jong Ha Wang*, 450

U.S. 139 (1981) (holding that the mere showing of economic detriment is insufficient to warrant a finding of extreme hardship).

Regarding potential relocation to Mexico, the applicant's wife states that if she went to Mexico, her "life would be ruined." *Declaration of* [REDACTED]. She claims that she has never lived in Mexico, cannot read or write Spanish, and all of her career plans "would go down the drain." *Id.* Further, [REDACTED] notes that they would have to live with her mother and brother in a small ranch four hours from Mexicali. *Id.* She describes the living conditions as impoverished, with no electricity and limited access to medical treatment. *Id.* The record reflects that the applicant's wife was born in the United States, and she reported during her psychological evaluation that her parents and five siblings live in the United States. *See Psychological Evaluation.* [REDACTED] reportedly obtained an Associate's Degree in Liberal Arts, and has worked as a cashier, sales associate, military police officer, loss prevention agent, and Federal Reserve Police Officer. *Id.* Given the applicant's wife's many equities in the United States, it appears that a decision to move to Mexico to live with the applicant could impose adjustment difficulties and hardships. However, the record does not support a finding that these difficulties would be unusual or beyond that which would normally be expected upon relocation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996).

In sum, although the applicant's spouse has presented some evidence of harm based on family separation or relocation, the record does not contain sufficient evidence to show that the difficulties encountered by the applicant's spouse, considered in the aggregate, 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.

In proceedings for an 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.