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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)
(CDJ 2004 711 641 relates)

Date: SEP 01 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 (the 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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. 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. § 212(a)(9)(B)(v), in order to reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated March 16, 2007.

The record contains, *inter alia*: a copy of the marriage certificate for the applicant and her husband, [REDACTED], indicating they were married on August 21, 2002; two letters from [REDACTED]; copies of [REDACTED] medical records; [REDACTED] request for oral argument; 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 the applicant does not contest, that the applicant entered the United States in May 2000 without inspection and remained until September 2005. The applicant accrued unlawful presence for over five years. She now seeks admission within ten years of her 2005 departure. Accordingly, she 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, [REDACTED] states his mother died when he was twelve years old and that since then, he has "developed what Psychiatrist may call a dependant [sic] personality." He states he feels the "need to have a female Mother figure around." [REDACTED] claims that without this "Mother figure" around, he "get[s] sick and aggressive towards the people around [him.]" In addition, [REDACTED] states that his father died in January 2002 and that he has no other family members in this country. He contends that his son from a previous marriage lives 400 miles away and that he feels very alone. Furthermore, [REDACTED] states that he has high cholesterol and was put on medication, but that without his wife with him, he feels "so depressed [he] can't think well." According to [REDACTED] "[t]he Doctor is recommending that I get help from a family member (wife) or risk a heart attack or possible death since [I] am alone." *Letters from* [REDACTED] both undated.

Copies of [REDACTED]'s medical records indicate he is on prescription medication for high cholesterol.

There is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if his wife's waiver application were denied.

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the couple's circumstances. However, [REDACTED] does not discuss the possibility of moving to Mexico to avoid the hardship of separation, and he does not address whether

such a move would represent a hardship to him. Rather, if [REDACTED] decides to stay in the United States, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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).

Although the record indicates [REDACTED] has high cholesterol, there is no letter in plain language from any health care professional diagnosing the severity, prognosis, and treatment [REDACTED] may require. [REDACTED] himself does not discuss how his high cholesterol affects his daily life and does not contend that he requires any assistance because of it. His contention that his doctor recommends he get help from a family member, *i.e.* his wife, is unsupported by the record as there is no letter from his doctor and the medical records in the record make no such recommendation. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

To the extent [REDACTED] states he is depressed and has a dependent personality, the evidence does not show that his depression has risen to the level of extreme hardship. There is no evidence, and [REDACTED] does not claim, that he has ever seen a mental health professional or been diagnosed with any mental health condition. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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)(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.