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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: TEGUCIGALPA, HONDURAS

Date: **JUL 16 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, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:

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 Officer-in-Charge, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who first entered the United States without inspection on April 1, 1998 and remained until January 2006, when she traveled to Honduras to apply for an immigrant visa. She was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. She 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 and reside with her husband.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer-in-Charge* dated March 22, 2007.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (“USCIS”) erred in determining that the applicant’s husband is not suffering extreme harm as a result of the applicant being barred reentry to the United States. *See Counsel’s Memorandum of Law in Support of Appeal* at 2. Specifically, counsel states that USCIS failed to give proper weight to the evidence presented, which demonstrates not only economic hardship, but also strong family ties to the United States. *Memorandum of Law* at 2. In support of the waiver application and appeal, counsel submitted affidavits from the applicant’s husband, information on conditions in Honduras, photographs of the applicant’s husband’s children, documentation related to the child support owed by the applicant’s husband, a bank statement for the applicant, and a letter from the applicant’s husband’s ex-wife. The entire record was reviewed and considered in arriving at a 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-

(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 . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien’s departure or removal, . . . is inadmissible.

(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 [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.

The AAO notes that the record contains several references to the hardship that the applicant's husband's children would suffer if the waiver application is denied. Section 212(a)(9)(B)(v) of the Act provide that a waiver of inadmissibility is available solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's child and stepchildren will not be separately considered, except as it may affect the applicant's spouse

Section 212(a)(9)(B)(v) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally held that 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). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. 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.

Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-two year-old native and citizen of Honduras who resided in the United States from April 1998, when she entered without inspection, until January 2006, when she returned to Honduras to apply for an immigrant visa. The applicant's husband is a fifty-one year-old native of Honduras and citizen of the United States. The applicant currently resides in Honduras and her husband resides in Athens, Tennessee.

Counsel asserts that the applicant's husband is suffering financial hardship as a result of the exclusion of the applicant from the United States and states that because he is sending money to the applicant in Honduras to assist with living expenses, his "ability to maintain any standard of living in the United States" is "severely burdened." *Memorandum of Law* at 5. In support of this assertion he submitted a statement indicating that the applicant's husband is over \$10,000 in arrears for his child support obligations, and asserts that he is in arrears because he does not have the applicant's income. *Memorandum of Law* at 5. The AAO notes that no documentation of the applicant's income when she resided in the United States, her husband's income, or the family's expenses was submitted to support the assertions that the applicant's husband is suffering financial hardship as a result of her departure or that the loss of her income is the reason he is in arrears with his child support payments. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. Living without the applicant's financial support therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. See *INS v. Jong Ha Wang*, *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

Counsel additionally asserts that the applicant's husband is suffering emotional hardship due to separation from the applicant and states that the exclusion of the applicant "strains the bonds of marriage and family, a matter which mandates close scrutiny." *Memorandum of Law* at 5. The applicant's husband states in his affidavit that he misses the love of his wife and he does not want to live so far from his wife and stepson anymore. See *Affidavit of* [REDACTED] dated May 23, 2006. He states, "I do not want to experience this feeling of loneliness, sadness, and depression anymore." *Id.*

Counsel asserts that the applicant's husband is experiencing emotional hardship as a result of separation from the applicant and his stepson. There is no evidence on the record, however, to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with his spouse's deportation or exclusion. Although the depth of his concern over his separation from the applicant 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 deportation or exclusion. The prospect of separation always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

Counsel asserts that the applicant’s husband would suffer extreme hardship if he were to relocate to Honduras because he would be separated from his two children who are in the custody of their mother. *Memorandum of Law* at 7. In support of this assertion, counsel relies on an unpublished decision of the BIA in which extreme hardship was found because a father would be unable to maintain a close relationship with and provide the same level of financial support for his children if he were removed from the United States. *Id.* In his affidavit the applicant’s husband states that his two U.S. Citizen children reside in New Jersey with their mother and he resides in Tennessee, and no evidence was submitted documenting how much contact the applicant’s husband has with his children. See *Affidavit of* [REDACTED] dated May 22, 2007. Further, documentation submitted with the appeal establishes that the applicant’s husband is over \$10,000 in arrears for his child support obligation of \$675 per month, and there is no evidence that his failure to pay child support initiated with the applicant’s departure from the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Separation from one’s U.S. Citizen children and the inability to support them financially due to removal or relocation to another country can result in extreme emotional hardship to a parent. The record in the present case is insufficient to establish, however, that the applicant’s husband has maintained a close relationship with his children or has provided them with financial support and that his departure from the United States would therefore result in extreme hardship.

The applicant’s husband states that he expects to make less money if he relocates to Honduras if he is able to find employment at all, and further states that he left Honduras 22 years ago because he could not find a well-paying job. See *Affidavit of* [REDACTED] dated May 22, 2007. In support of this assertion counsel submitted a U.S. State Department Background Note on Honduras that states that Honduras is one of the poorest countries in Latin America, with unemployment estimated at 28% in 2005. As noted above, no documentation was submitted concerning the income of the applicant or her husband in the United States, and going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Further, although relocating to Honduras would likely have a negative effect on the financial situation and standard of living of the applicant’s husband, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. See *INS v. Jong Ha Wang, supra*.

The emotional and financial hardship the applicant’s husband would experience if the applicant is denied admission to the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465,

468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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. 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.