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U.S. Department of Homeland Security  
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Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date:

**JUN 25 2009**

IN RE:



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 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 50-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 lawful permanent resident of the United States, and she 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 her husband and children in the United States.

The District Director found that the applicant failed to establish extreme hardship to her spouse, and denied the application accordingly. *Decision of the District Director*, dated April 28, 2006. On appeal, the applicant's husband, [REDACTED], contends that the denial of the waiver imposes extreme hardship on him and his family. *See Form I-290B, Notice of Appeal*, dated May 26, 2006.

The record contains, *inter alia*, a copy of the couple's marriage certificate, indicating that they were married on September 20, 1996, in Arizona; copies of the birth certificates for the couple's two U.S. citizen children; two letters from the applicant's husband discussing some of the hardships imposed on him as a result of family separation, and letters from the applicant's older daughter and the couple's two children. The entire record was reviewed and considered in rendering this decision on the 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 inspection in or around June, 1990. See *Form I-601, Application for Waiver of Ground of Excludability*, filed May 31, 2005; *Decision of the District Director*, at 2. The applicant's spouse filed Form I-130, Petition for Alien Relative, on January 5, 1998, and USCIS approved the petition on July 30, 2001. See *Form I-130, Petition for Alien Relative*. The applicant departed the United States on May 28, 2005. See *Form I-601, supra*; *Decision of the District Director, 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, 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 himself, or to his 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) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr.

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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).

1979) (noting in the context of a waiver under section 212(i) of the INA 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 50-year-old native of Mexico and lawful permanent resident of the United States. The applicant and her husband have been married for almost 13 years. See *Marriage Certificate*. The couple’s daughter [REDACTED] was born in 1992 in Tucson, Arizona. See *Birth Certificate for [REDACTED]*. The couple’s son [REDACTED] was born in 1993 in Tucson, Arizona. See *Birth Certificate for [REDACTED]*. The applicant’s spouse asserts that he is suffering extreme hardship as a result of the separation from his wife. See *Form I-290B, Notice of Appeal, supra*; *Letter from [REDACTED]*, dated Dec. 21, 2005.

In support of the hardship claim, the applicant’s husband states that the separation has affected him “emotionally, economically, and morally.” *Letter from [REDACTED]*, *supra*. [REDACTED] claims emotional harm based on the impact of the separation on his children, who “cry for their mom all of the time,” and who do not have their mother there to “help them with homework, food and to provide them company.” *Id.* The applicant’s husband states that they “are so sad all of the time,” and that he is “so desperate that [he does] not know what to do.” *Id.* [REDACTED] also contends that their financial situation is very difficult and getting worse because he must support his family in the United States and his wife in Mexico. *Id.* [REDACTED] claims that he must spend “approximately \$2,464 per month for [his] home in Tucson, Arizona, USA and Magdalena, Sonora, Mexico.” See

*Form I-290B, Notice of Appeal, supra.* Finally, the applicant's husband states that the couple's children "are at a delicate age and need their mother's attention morally." *Id.* [REDACTED] fears that without the applicant, "influence[s] outside the home will deter their lives." *Id.* There is no evidence in the record regarding any potential hardships [REDACTED] would face if he relocated to Mexico to be with his wife.

The applicant's spouse has provided some evidence regarding the hardships imposed by family separation. *See Letters from [REDACTED] supra; Form I-290B, Notice of Appeal, supra.* However, this record does not contain sufficient documentary evidence to support the claim of extreme hardship based on family separation. For instance, beyond the statements of [REDACTED] there is no documentary evidence in the record to support the claim of extreme financial hardship as a result of the denial of the waiver. Additionally, there is no documentary evidence in the record to support the claim of [REDACTED] psychological hardships, such as an ongoing relationship with a mental health professional, or any history of treatment for anxiety or any other medical or **psychological conditions**. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998).

Further, the applicant's husband has not provided any evidence regarding the hardships that he would suffer if he were to relocate to Mexico to live with the applicant. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (setting forth list of relevant hardship considerations). Given the applicant's husband's equities in the United States, it appears that relocation to Mexico could cause difficulties. However, the applicant did not present any evidence regarding these potential hardships, and these factors cannot be considered. *See Matter of Soffici, supra.*

In sum, although the applicant's spouse has presented some evidence of harm based on family separation, 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 her 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.