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U.S. Citizenship  
and Immigration  
Services

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FILE: Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: **JUN 25 2009**  
CDJ 2004 680 034

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 33-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 U.S. citizen, 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 children in the United States.

The District Director found that the applicant failed to establish extreme hardship to his citizen spouse, and denied the application accordingly. *Decision of the District Director*, dated June 6, 2006. On appeal, the applicant's spouse asserts that she is suffering extreme hardship as a result of the denial of the waiver. *See Form I-290B Notice of Appeal*, dated June 12, 2006.

The record contains, *inter alia*, a copy of the applicant's spouse's Birth Certificate, showing that she was born in Harris County, Texas; a copy of the couple's marriage license, issued in Harris County, Texas on February 26, 2001; copies of the birth certificates for the couple's four U.S. citizen children; several letters from the applicant's spouse detailing the extreme hardship that she has encountered as a result of the denial of the applicant's request for a waiver; a letter from the applicant, dated December 12, 2005; a Notice to Vacate for Non-Payment of Rent, dated June 6, 2005; two invoices from Reliant Energy, showing past due amounts and impending disconnection of electric service; a past due medical bill [REDACTED], dated June 10, 2005; and employment records for the applicant's spouse for 2005 and 2006. 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 December, 1995. *See Form I-130, Petition for Alien Relative; Decision of the District Director, supra* at 2. The applicant's spouse, [REDACTED] filed Form I-130, Petition for Alien Relative, on October 22, 2002, and USCIS approved the petition on May 24, 2004. *See Form I-130, Petition for Alien Relative, supra*. The applicant departed the United States in June, 2005. *See Decision of the District Director, supra* at 2; *Form I-601, Application for Waiver of Ground of Excludability*. 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

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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).

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. 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.

Considering the cumulative impact of the relevant factors, the AAO finds that the applicant’s spouse has established that the denial of a waiver imposes an extreme hardship on her if she remains in the United States without her husband.

First, the applicant’s spouse has presented evidence of the extreme financial hardships that she faces as the sole wage earner for her family of five. The evidence shows that the applicant’s spouse worked for ██████████ in 2005 and 2006, making a wage of \$7.05 to \$7.30 per hour. *See W4 Forms* for ██████████. At this pay rate, the applicant’s spouse’s annual income was approximately half of the federal poverty guidelines for a family of five, which stood at \$23,400 in 2006. Given her limited income, the applicant’s spouse has been unable to meet all of her family expenses, including rent, utilities, medical care, and transportation. For instance, the applicant’s wife stated that she had to move apartments three times because she was unable to pay the rent. *See Letter from* ██████████ ██████████, dated July 10, 2006; *Notice to Vacate for Non-Payment of Rent*, dated June 6, 2005. In her

Notice of Appeal, the applicant claims that her family does not have a stable place to live, and that she has been forced to live with relatives. *See Notice of Appeal, supra; Letter from [REDACTED], supra.* Additionally, the applicant's spouse presented evidence that she was unable to pay for electrical service. *See Reliant Energy Disconnection Notice*, dated May 9, 2006. The record also contains a past due bill for medical care for the applicant's daughter [REDACTED]. *See Invoice from Memorial City Emer Phys LLP*, dated June 10, 2005. The applicant claims that his wife "lost her means of transportation because she could not keep up the car payments." *See Letter from the Applicant*, dated Dec. 12, 2005; *Letter from [REDACTED]* dated Dec. 12, 2005.

Second, the applicant's wife has presented evidence of the psychological hardship imposed as a result of family separation. The record reflects that the applicant and his wife have been in a relationship since at least 1999, when their first child was born. *See Birth Certificate of [REDACTED]*, indicating birth on Aug., 15, 1999, in Oklahoma City, Oklahoma. Although there is no marriage certificate in the record, it appears that the couple was married on March 2, 2001, in Houston, Texas. *See Form I-130, supra; Marriage License, supra.* The couple's daughter [REDACTED] was born on January 4, 2002, in Richmond, Texas. *See Birth Certificate for [REDACTED]*. [REDACTED] was born to the couple on November 24, 2003. *See Birth Certificate for [REDACTED]*. Finally, [REDACTED] was born in Houston, Texas on March 6, 2005. *See Birth Certificate for [REDACTED]*. The applicant's spouse states that she and her children have been "well provided and cared for by [her] very caring husband." *See Affidavit of [REDACTED]* dated June 2, 2005. The applicant's wife also fears that their "marriage would [deteriorate] if [they] were forced to live apart." *Id.* Finally, the record reflects that the applicant's wife is impacted by the psychological hardships faced by the children. *See Letter from [REDACTED]*, dated July 10, 2006 (listing some of the emotional hardships faced by the children, and the impact on the family).

In sum, the applicant's spouse has provided evidentiary support for her contention that she faces financial and psychological hardships without the presence of her husband in the United States. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (recognizing importance of family ties and the financial impact of departure); *Salcido-Salcido*, 138 F.3d at 1993 (emphasizing weight to be given to the hardship that results from family separation); *Matter of Lopez-Monzon*, 17 I&N Dec. at 281 (noting that waiver was designed to promote the unification of families and to avoid the hardship of separation). Considered in the aggregate, these hardships rise above the common results of deportation or removal, and constitute extreme hardship. *See Matter of O-J-O-*, 21 I&N Dec. at 383.

However, the applicant has not provided any evidence regarding the hardships that his wife would suffer if she were to relocate to Mexico to live with him. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (setting forth list of relevant hardship considerations). Given the applicant's wife's equities in the United States, it appears that relocation to Mexico could cause difficulties for her. However, the applicant did not present any evidence regarding these potential hardships, and these factors cannot be considered. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (requiring supporting documentary evidence to meet the applicant's burden of proof). The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.



In proceedings for an application for a waiver of the grounds of inadmissibility, 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.