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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
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Services

H3

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: JUN 25 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:

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 that reads "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 applicant is a native and citizen of Mexico who resided in the United States from May 2000, when she entered without inspection, until December 2002, when she returned to Mexico. She was found to be inadmissible to the United States under 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 for having been unlawfully present in the United States for 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 spouse.

The district director 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 District Director* dated June 23, 2006.

On appeal, the applicant states that she and her husband have been married for over six years and have two children together. The applicant's husband states that he is struggling emotionally and feels hopeless and empty and that he misses their children, who are in Mexico with the applicant and are also experiencing emotional hardship due to separation from their father. *See letter from* [REDACTED] [REDACTED] dated February 15, 2007. The applicant's husband further states that he must work long hours to meet his financial responsibilities. *Id.* In support of the waiver application and appeal the applicant submitted a letter from her husband and letters from co-workers of her husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

The applicant also submitted with the appeal several documents in Spanish, including receipts for money transfers and various notes from different physicians. 8 C.F.R. § 103.2(a)(3) states:

(3) Translations. Any document containing foreign language submitted to the Service [now U.S. Citizenship and Immigration Services, "USCIS"] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

These documents were submitted in Spanish without an English translation and therefore cannot be considered as evidence.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (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 Secretary, 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 *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 twenty-nine year-old native and citizen of Mexico who resided in the United States from May 2000, when she entered the country without inspection, to December 2002, when she returned to Mexico. The applicant's husband is a thirty-five year-old native of Mexico and citizen of the United States whom the applicant married on December 8, 1999. The applicant currently resides in Mexico and her husband resides in Arcadia, Wisconsin.

The applicant's husband states that he is struggling emotionally and feels hopeless and empty due to separation from his wife. There is no evidence on the record, however, concerning the applicant's husband's mental health or the potential emotional or psychological effects of the separation. The

evidence on the record does not establish that the emotional effects of separation from the applicant are more serious than the type of hardship a family member would normally suffer when faced with the prospect of a spouse's removal or exclusion. Although the depth of his distress over being separated from his wife 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 or exclusion. The prospect of separation or involuntary relocation nearly 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.

The applicant's husband further states that he must work long hours to keep up with his financial responsibilities, but no documentation concerning the applicant's husband's income and employment or his living expenses was submitted. Further, as noted above, receipts submitted with the appeal that appear to document remittances sent to the applicant in Mexico are in Spanish, and cannot be considered. No other evidence was submitted to support an assertion that the applicant's husband has suffered or would suffer financial hardship as a result of separation from the applicant. 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)). Further, there is no indication that there are any ongoing unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of separation from the applicant. Any financial impact of the loss of the applicant's income 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).

The applicant's husband additionally asserts that his children are often sick in Mexico. The effects of significant conditions of health of a child of a qualifying relative, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship to the qualifying relative. The evidence on the record does not establish, however, that the applicant's children suffer from a significant medical condition that would cause the applicant's husband to suffer extreme hardship. As noted above, notes or prescriptions from a physician in Mexico were submitted with the appeal, but these documents are in Spanish with no translation and cannot be considered. The record contains no detailed information concerning the nature and severity of any medical condition of the applicant's children. 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*.

Any emotional or financial hardship the applicant's husband is experiencing due to separation from the applicant 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). No claim was made that the applicant's husband would suffer extreme hardship if he relocated to Mexico with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's husband would suffer extreme hardship if he moved to Mexico.

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.