

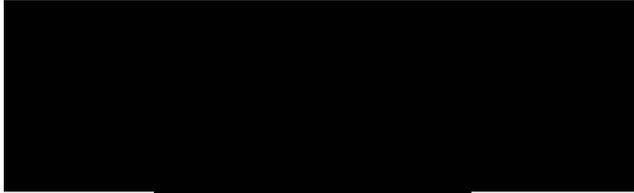
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE:

CDJ2004 569 147

Office: MEXICO CITY (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. 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 thirty-seven year-old native and citizen of Mexico who was found 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 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 and children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 5, 2006.

On appeal, the applicant asserts that her husband is experiencing extreme emotional and financial hardship as a result of their separation. Specifically, the applicant's husband states that he and his three children who are with him in the United States are suffering emotional hardship due to separation from the applicant. *See letter from [REDACTED]* dated June 27, 2006. He further states that he is suffering financial hardship because he has to maintain two households, one in the United States and one in Mexico, where the applicant resides with their two youngest children. *Id.* He further sate that all of the children have had to see a doctor because of the effects of the separation. *Id.* In support of the waiver application and appeal, the applicant submitted a letter from her husband, a psychological evaluation of the applicant's son, a medical evaluation of the applicant's husband, letters from the principal and teachers of the school attended by the applicant's daughters, letters from the school nurse and the school social worker, a letter from the school guidance counselor, a letter from a neighbor of the applicant's husband and daughters, letters from the applicant's daughters, and a letter from the church attended by the applicant's family in Newton, Wisconsin. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relatives for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

Section 212(a)(9)(B)(v) of the Act provides 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.

The record reflects that the applicant is a thirty-seven year-old native and citizen of Mexico who resided in the United States from February 1995, when she entered without inspection, to June 2005, when she returned to Mexico. The record further reflects that the applicant's spouse is a thirty-five year-old native and citizen of the United States. The applicant married her husband in April 2001 and they have five U.S. Citizen children. The applicant resides in Mexico with their two youngest children and her husband resides in Manitowoc, Wisconsin with their three older children.

The applicant's husband states that he and his children are suffering emotional hardship due to separation from the applicant and furthers states that he has had to take his children to a doctor as a result of the separation. *Letter from* [REDACTED] dated June 27, 2006. He further states that all of their children are small and need to be with both their father and their mother, and that he has experienced hardship as a result of the effects of the separation on his children. In support of these assertions the applicant submitted a medical evaluation of her husband and several letters from their daughters' school. The medical evaluation, which was conducted on June 22, 2006, states that the applicant's husband complained of "progressive fatigue, tiredness, and depression," and that he believes it was triggered when his wife was unable to return from Mexico several months before. *See Evaluation by* [REDACTED] dated June 22, 2006. The evaluation further states that the applicant's husband indicated that when the applicant's visa was denied, he had no other option than to split the family, with the three older children staying with him in the United States and the two youngest remaining with the applicant in Mexico, because he was unable to care for all of them. *Id.* The evaluation further indicates that the applicant's husband states "that his family are presenting signs of depressed mood also with episodes of anxiety specially (sic) his younger one [REDACTED]" and that having to maintain two households is taking a toll on him and requiring him to work 12 to 14 hours a day. *Id.* [REDACTED] further states that the separation and dissolution of his family unit is an identifiable stressor that has caused frequent headaches, insomnia, fatigue and depressed mood and that the condition, which has persisted from over six months, is chronic. He prescribed an antidepressant medication and recommends that the applicant's husband be evaluated by a psychologist "in order to avoid the worsening of the adjustment disorder."

Letters from the school attended by the applicant's daughter states that they are in need of their mother's care and that their school work and emotional well-being is being affected by the separation. *See Letter from* [REDACTED] *Principal of Jefferson Elementary School*, dated November 11, 2005. The record also includes several letters from teachers at the school, including one that states,

[REDACTED] her youngest daughter, has been quiet in school. . . . [REDACTED] for the most part, keeps to herself. There is sadness in her demeanor. We are also concerned about her appetite. She has not been eating properly at school. She needs encouragement to take a bite If she is not closely monitored, she may not eat anything at lunchtime. *Letter from* [REDACTED] *English as a Second Language Teacher, Riverview School.*

A letter from the school social worker states that he is “frequently asked to locate community resources that may benefit a family in need of assistance,” and that the applicant’s family was brought to his attention due to the stress brought on by separation from their mother. *Letter from [REDACTED] School Social Worker*, dated December 21, 2005. The letter further states that the applicant’s oldest daughter had to take on the role of mother because of the applicant’s absence and her father’s work schedule, and was responsible for getting herself and her two younger sisters out of bed, preparing breakfast, and getting them ready for school, and these responsibilities were creating “a significant amount of stress and anxiety on her.” The school guidance counselor also met with the two older daughters and found that “socially and emotionally they are affected greatly by the separation,” and they feel burdened by the additional responsibilities placed on them. *Letter from [REDACTED], School Guidance Counselor* dated January 2, 2006. A letter from a neighbor further indicates that the girls are having a hard time without their mother and that she checks on them in the morning and sees they are having difficulty getting up and ready for school on their own. *Letter from [REDACTED]*

Documentation on the record indicates that the applicant’s young daughters have taken on considerable responsibilities since the applicant departed and that the stress of these responsibilities and the emotional hardship of being separated from their mother has affected their physical and emotional well-being and their school work. The record further indicates that the applicant’s husband has to work long hours to support both households, and this is the reason the girls must take on these responsibilities. A medical evaluation indicates that the applicant’s husband is suffering from chronic symptoms of depression and had been prescribed an antidepressant and referred for evaluation by a psychologist. It appears that when considered in the aggregate, the emotional and financial hardship caused by separation from the applicant and having to provide for his family and care for his three young daughters without the applicant, combined with the emotional effects of the hardship to their daughters on the applicant’s husband, rises to the level of extreme hardship.

The applicant’s husband states that his children in Mexico have been sick as a result of the separation from the rest of the family. *Letter from [REDACTED]* dated June 27, 2006. The applicant submitted a psychological evaluation of their son who is residing in Mexico, but no further information or evidence concerning the effects of relocating to Mexico was submitted. The evaluation states that the applicant’s son, who was four years old at the time, was exhibiting behaviors such as fear of being separated from his mother that appear to be caused by separation from his father without saying goodbye. *See Psychological Evaluation by [REDACTED]* dated June 2006. There is no evidence on the record indicating that the applicant’s husband or other family members would suffer extreme hardship if the applicant’s husband relocated to Mexico, such as documentation of the income of the applicant’s husband in the United States, information on economic and social conditions in Mexico, evidence of family or other ties in the United States, or other information related to the effects of relocation to Mexico on the applicant’s husband and 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*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on the evidence on the record, the emotional and financial hardship the applicant's husband would experience if he relocates to Mexico 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.