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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
(CDJ 2004 655 085 relates)

Office: MEXICO CITY

Date: MAR 05 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the 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. 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 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 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 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 reside with his wife and child in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated April 10, 2006.

On appeal, the applicant's wife, [REDACTED], claims she has suffered extreme hardship since her husband left the United States.

The record contains, *inter alia*: a copy of the marriage license of the applicant and his wife, [REDACTED] indicating they were married on February 16, 2002; a declaration from [REDACTED]; a copy of [REDACTED]'s birth certificate; a copy of the birth certificate of the couple's U.S. citizen son and his immunization records; copies of bills for ambulance service and an emergency room visit for a [REDACTED] a copy of the 2005 tax return for the applicant and his wife; a No-Harm Suicide Contract signed by [REDACTED] a copy of instructions from a hospital for [REDACTED] abdominal pain; a copy of a prescription; copies of three appointment reminders with the Behavioral Health Adult Center; a copy of [REDACTED] high school diploma; a copy of [REDACTED]'s transcript from Bakersfield College; a letter of support from [REDACTED] church; a photo of the applicant with his wife and son; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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 -

(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 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 this case, the record indicates, and the applicant does not contest, that he entered the United States in August 2000 without inspection and remained until April 2005. The applicant accrued unlawful presence for over four years. He now seeks admission within ten years of his 2005 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: 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.

It is not evident from the record that the applicant has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

In this case, [REDACTED] states that after her husband left the United States, she was forced to move into her parents' house because she can no longer afford to pay for rent or food. *Declaration of* [REDACTED], dated April 28, 2006. She states that her parents are elderly and have their own health problems. *Id.* She claims that her son was constantly crying for his father, and therefore, [REDACTED] and her son went to Mexico with a ninety-day visitor's permit to visit the applicant. *Id.* According to

██████████, while they were in Mexico, her son had diarrhea, vomiting, and a fever for most of the ninety days they were there. *Id.* She claims that she also became ill with the same symptoms and concludes that both of them are unable to live in Mexico. *Id.* In addition, ██████████ states that she was robbed twice while in Mexico, threatened with physical harm if she reported the incidents to authorities, and left the country because she feared for their lives. *Id.* Moreover, ██████████ contends she has developed stomach ulcers due to stress, and that in March 2006, she “suffered a nervous episode that forced [her] to seek medical attention at the Delano Hospital Center emergency room.” *Id.* She asserts her doctor has warned her that she is “at risk of hemorrhaging,” and that she may need hospitalization or psychiatric care. *Id.*

Even assuming ██████████ would suffer extreme hardship if she moved to Mexico to be with her husband, nonetheless, she has the option of staying in the United States. After a careful review of the record, there is insufficient evidence to show that she has suffered or will suffer extreme hardship if she were to remain in the United States without her husband. The AAO recognizes that ██████████ has endured hardship since the applicant departed the United States and is sympathetic to the family’s circumstances. However, with respect to ██████████ financial hardship claim, there is insufficient evidence in the record to substantiate her claims. Aside from the couple’s 2005 joint tax return showing that the couple’s income was \$4,920 and listing ██████████ occupation as “housewife,” there are no other tax or financial documents in the record. There is no documentation regarding either the applicant’s or his wife’s income or expenses. There are no statements in the record from ██████████ parents substantiating her claim that she has moved in with them and that they are now financially supporting her. There is no evidence from employers verifying the applicant’s past employment, and no documentation regarding his wages. There is no evidence in the record suggesting that ██████████ has ever worked or that she is seeking employment. Without more detailed information, the AAO is not in the position to attribute ██████████ financial difficulties to the applicant’s departure. In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

Regarding ██████████ physical and mental health problems, there is insufficient evidence in the record to show that her health issues have risen to the level of extreme hardship. With respect to her assertion that she may need psychiatric care, *Declaration of ██████████ supra*, there is no documentation in the record to support ██████████ claim. The record contains a copy of three appointment reminders with the Clinica Sierra Vista, ██████████ Behavioral Health Adult Center, a copy of a prescription, and a No-Harm/Suicide Contract ██████████ signed. Notably, ██████████ does not allege in her affidavit that she is suicidal or that she receives therapy, counseling, or any type of mental health services. The copy of the prescription in the record is illegible and ██████████ does not claim she takes any prescription medication. The No-Harm contract ██████████ signed states that she promises not to harm herself or any other person. *Id.* However, based on the record, there is no suggestion whatsoever that she is at risk or harming herself or anyone else. Not only are there no letters or statements from a counselor, therapist, or other mental health professional in the record, but

there are also no letters or statements from family members, friends, colleagues, or anyone else addressing [REDACTED]'s mental health status. Similarly, there is no evidence [REDACTED] has stomach ulcers, as she claims. The only documentation in the record is from the [REDACTED] which gave [REDACTED] a copy of "Instructions for Patient." [REDACTED] *Instructions for Patient*, dated March 15, 2006. These instructions state that Ms. [REDACTED] "exam has not revealed the exact cause of [her] abdominal pain." *Id.* There is no letter or statement in the record from a doctor or health care professional indicating [REDACTED] has stomach ulcers, or that they are at risk of hemorrhaging and due to stress, as she claims. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical or mental health condition, or the treatment and assistance needed.

Although the AAO recognizes [REDACTED] will endure hardship by remaining in the United States, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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. *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.