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U.S. Citizenship  
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Services

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H4

FILE

[REDACTED]

Office: MEXICO CITY

Date:

MAR 03 2009

(CDJ 2004 757 084 relates)

IN RE:

[REDACTED]

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. § 212(a)(9)(B)(v), in order to reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated August 17, 2006.

On appeal, the applicant's husband, \_\_\_\_\_ claims he has suffered extreme financial hardship since his wife left the United States.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, \_\_\_\_\_, indicating they were married on June 28, 2002; two letters from \_\_\_\_\_ copies of \_\_\_\_\_'s pay stubs; copies of bills and other financial documentation; 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) 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 she entered the United States in May 1993 without inspection and remained until October 2005. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until her departure from the United States in October 2005. Therefore, the applicant accrued unlawful presence of over eight years. She now seeks admission within ten years of her 2005 departure. Accordingly, she 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 application being denied.

In this case, [REDACTED] states that he has been suffering extreme personal and financial hardship since his wife's departure from the United States. [REDACTED] states that their trip to Mexico was very expensive and that they were devastated when his wife was told she had to stay in Mexico. [REDACTED] submitted copies of the bills he paid in Mexico. He further states that he loves his wife and misses her. Furthermore, he claims he has to pay for his house and bills in the United States as well as send money to his wife in Mexico. *Letter from* [REDACTED] dated November 26, 2005; *Letter from* [REDACTED], dated November 3, 2005.

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the couple's circumstances. However, there is insufficient evidence in the record to show extreme hardship to [REDACTED] as a result of the applicant's departure. Significantly, [REDACTED] does not discuss the possibility of moving to Mexico to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. Their situation, if [REDACTED] remains in the United States, 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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).

To the extent [REDACTED] contends that his trip to Mexico with his wife was very expensive and that he must pay for her cost of living in Mexico as well as his expenses in the United States, there is insufficient evidence that this financial burden rises to the level of extreme hardship. The record indicates that the applicant was not employed while she resided in the United States. *See Petition for Alien Relative (Form I-130)* (stating that the name and address of her employer was "none"); *Biographical Information* (stating the applicant's occupation as "homemaker"). There is no indication the applicant cannot work or that she has sought, or is seeking, employment. There are no tax documents in the record, and there is no documentation regarding the applicant's or [REDACTED] regular expenses such as rent or mortgage. Therefore, although the AAO does not doubt that [REDACTED] financial situation is precarious, without more detailed information, the AAO **cannot attribute** [REDACTED] 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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 she 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.