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



U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: CIUDAD JUAREZ Date: **MAR 18 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:

[REDACTED]

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, 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 Officer-in-Charge, Ciudad Juarez, 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 has resided in the United States since April 2000, when he entered the country without inspection, to April 2005, when he returned to Mexico to apply for an immigrant visa. He was found to be inadmissible to the United States under 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 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. He 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 to reside with his wife.

The officer-in-charge 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 the Officer-in-Charge* dated April 28, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife is suffering extreme hardship as a result of being separated from the applicant. Specifically, counsel claims that the applicant's wife is experiencing stress and suffering from depression due to being involuntarily separated from the applicant. *See Counsel's letter in Support of the Appeal* dated May 19, 2006. Counsel further states that the applicant's wife is experiencing financial hardship due to the expenses she had incurred from visits and phone calls to the applicant in Mexico. *Id.* In support of the waiver application and appeal counsel submitted letters from the applicant and his wife, a psychological evaluation for the applicant's wife, letters from friends and relatives of the applicant's wife, a letter from a counselor concerning the applicant's treatment for a mental disorder and substance abuse, and information related to the applicant's wife's medical insurance. The entire record was reviewed and considered in arriving at 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.

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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 forty-two year-old native and citizen of Mexico who resided in the United States from April 2000, when he entered without inspection, until April 2005. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from April 2000 to April 2005, when he returned to Mexico. The applicant's wife is a forty-seven year-old native and citizen of the United States. The applicant currently resides in Hermosillo, Mexico and his wife resides in Wyoming, Michigan.

Counsel asserts that the applicant's wife is suffering extreme emotional hardship as a result of being separated from the applicant, and in support of this assertion submitted a psychological evaluation from [REDACTED]. Dr. [REDACTED] states that the applicant's wife, who was evaluated on May 16, 2006, is experiencing "significant financial, physical, and emotional hardship" since being separated from the applicant. *See Evaluation of [REDACTED]* at 1-2. Dr. [REDACTED] further states that the applicant's wife has reported increased anxiety and hyper-vigilance since the applicant's departure,

and indicates that the applicant's wife fears for her personal safety now that she is living alone without the applicant to protect her. *Id.* at 2. Dr. [REDACTED] also states that the applicant's wife has indicated that her anxiety had been exacerbated by her inability to care for her mother, who suffers from chronic pulmonary obstructive disorder, since the applicant departed. *Id.* Dr. [REDACTED] concludes: "It is evident that [REDACTED] suffers from stress induced anxiety and depression resulting from, or exacerbated by, [REDACTED]'s ongoing legal detainment in Mexico." *Id.* Letters from friends and family members of the applicant's wife also indicate that she appears anxious and depressed since the applicant's departure and fears for her safety living alone in her home.

The applicant's wife indicates that her mother suffers from a serious medical condition and the applicant's presence enabled her to provide more support for her mother than she is able to provide now. *See Letter from [REDACTED] dated May 15, 2006; Evaluation of [REDACTED] at 1.* The effects of significant conditions of health of a close relative can be relevant factors in establishing extreme hardship to the qualifying relative. The evidence on the record does not establish, however, that the applicant's mother-in-law suffers from a serious medical condition, as no documentation was submitted to support this assertion. 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)).

The evidence does not establish that any emotional difficulties the applicant's wife would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her distress caused by separation from her husband is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation 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.

Counsel asserts that if the applicant is denied admission to the United States, his wife will suffer financial hardship. The applicant's wife states in her affidavit: "I am low income and I really need his income to make 'ends meet.' It has been quite tough on me financially since he left over a year ago." *Letter from [REDACTED] dated May 15, 2006.* The AAO notes that the record contains no evidence of the applicant's wife's income or the applicant's income while he resided in the United States, and no other documentation concerning the expenses or overall financial situation of the applicant and his wife. As noted above, 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.* 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 and expenses incurred by travel and phone calls to Mexico therefore appear to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife.

*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 emotional and financial hardship the applicant's wife would experience if he is denied admission to the United States 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 wife would suffer extreme hardship if she relocated to Mexico with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's wife would suffer extreme hardship if she moved to Mexico.

In this case, the record does not contain sufficient evidence to show that any 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 his 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.