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

U.S. Citizenship and Immigration Services

H6

[redacted]

AUG 0 2 2010

FILE: AAO 08 117 50009 Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date:
CDJ 2005 678 678

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Ground 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 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 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 more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is married to a United States citizen (USC) and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 in the United States with his USC wife and stepchildren.

The director concluded that the applicant failed to establish extreme hardship to his spouse, and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 24, 2007.

On appeal, the applicant's spouse states that she and her children will suffer emotional and financial hardship if the applicant's waiver application is denied.

The record includes, but is not limited to, two statements of hardship from the applicant's wife, one dated November 17, 2007, and the other undated, a letter from [redacted] dated November 12, 2007, copies of Employee Corrective Action from K & N Engineering, Inc., an elementary school report card from Riverside Unified School District, Riverside, California, and a report card from Poly High School, Riverside, California. The entire record was reviewed and considered in rendering this decision on 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 [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 the present case, the applicant claims that he entered the United States without being inspected and admitted or paroled in September 2004. On March 8, 2005, the applicant's United States citizen wife filed a Form I-130 on the applicant's behalf. On May 26, 2005, the Form I-130 was approved. In December, 2005, the applicant voluntarily departed the United States. On September 5, 2006, the applicant filed a Form I-601. On October 24, 2007, the District Director denied the Form I-601, finding that the applicant failed to establish extreme hardship to his spouse. The applicant accrued unlawful presence from September 2004, when he illegally entered the United States until December 2005, when he voluntarily departed the United States. The applicant's unlawful presence for more than one year and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006). Thus, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. The AAO also notes that the record contains several references to the hardship that the applicant's stepchildren would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's stepchildren will not be considered, except as it may cause hardship to the applicant's spouse. 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).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565. 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. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). 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).

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 *Hassan v. INS*, *supra,* the court further held that the 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. Moreover, the U.S. Supreme Court additionally 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 this case, the record reflects that the applicant's spouse, [redacted] native and citizen of the United States. The applicant and her husband were married in Riverside, California, on February 12, 2005, and do not have any children together. The record reflects that the applicant's wife has two children born prior to her marriage to the applicant. The applicant's spouse asserts that she is suffering extreme emotional and financial hardships as a result of the denial of the waiver.

The AAO also notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States,

as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Regarding the emotional hardship of separation, the applicant's wife states that the applicant is a loving and caring husband and that his absence has destroyed "our once united family." *Statement by* [redacted] dated November 17, 2007. The applicant's wife states that she has suffered from diabetes for the past four years, that her symptoms have greatly increased since the applicant left the United States, that her health has rapidly deteriorated, that she is extremely depressed and irritable to the point that her doctor told her to seek psychiatric care to help her cope with the situation. *Id.* The applicant's wife further states "I need [the applicant] here to help me both physically and mentally." The applicant's wife also states that her children are close to the applicant and consider him to be their father, that her children miss the applicant and want him home with them, and that the applicant's absence has had a negative impact on them. *Id.* For example, the applicant states that her son, [redacted] has developed a rebellious nature and has been kicked out of school, and that her daughter, [redacted], once an excellent student is now in danger of failing and having to repeat 5th grade. *Id.* Finally, the applicant's wife states that she and her children need the applicant "emotionally and economically." The record includes a letter from [redacted], dated November 12, 2007, stating that the applicant's wife has been under her care for the past four years for diabetes. *See Letter by* [redacted] dated November 12, 2007. [redacted] states that the applicant's wife "has lately become more noncompliant difficult to control due to increased depressive symptoms that have prompted [the applicant's wife] to seek psychiatric care." *Id.* [redacted] concludes that "it would be beneficial to [the applicant's wife's] health to have [the applicant] here for emotional and financial support as this seems to be at the core of her emotional distress at this point in time." The record also contains a report card from Poly High School, Riverside, California, showing that the applicant's son, [redacted] is at risk of failing the class, a letter from Riverside School District showing that [redacted] was transferred from Poly High School to North High School, and an Elementary School Report Card from Riverside Unified School District, Riverside, California, showing that the applicant's daughter, Mirella is at the risk of repeating 5th grade.

Regarding the financial hardship of separation, the applicant's wife states that she has been absent from work many times because she was tending to the applicant's immigration case, and as a result, her employer reprimanded her by reducing her pay, leaving her with less money to maintain her children and pay rent for her apartment. *Statement by* [redacted], dated November 17, 2007. The applicant's wife states that as a result of reduced income, she was unable to pay the rent and meet her other financial obligations, so she and her children moved in with her parents. *Id.* The record includes two documents from K&N Engineering, Inc., dated September 14, 2007, and September 17, 2007, respectively. The first document, an employee corrective action, states that the applicant's wife has been absent fifteen times within a five month period of initial wage increase in 2007. The second document, a payroll/personnel change notice, indicates a change in her hourly rate from $13.00 to $12.12, effective September 17, 2007, evidencing lowered income as a result of the excessive absences.

The evidence of the applicant's wife's medical, emotional and financial hardship, cumulatively rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Although hardships faced by the applicant's stepchildren as a result of family separation are not considered in the extreme hardship analysis, the evidence in this case shows that the difficulties faced by the applicant's stepchildren – [redacted] problems at school and [redacted] failing grades – have caused the applicant's wife, the qualifying relative, extreme emotional hardship. Thus, the applicant has established that his wife has suffered extreme hardship as a result of family separation.

Regarding relocation, the applicant's wife states that it would be a hardship for her and the children to move to Mexico to reside with the applicant because "we have great plans for the future." *See Undated Statement by Leticia Puente.* The applicant's wife states that moving to Mexico would strongly affect their lives because she would be deprived of the opportunity to work in the United States. *Id.*

While the AAO acknowledges the claims made by the applicant's wife, it does not find the evidence in the record to support them. The record does not contain documentary evidence, such as a country conditions report on Mexico that demonstrates that the applicant's wife would be unable to obtain employment upon relocation to Mexico. The record is silent regarding whether the applicant's wife has any family ties in Mexico that would help her adjust to life in Mexico. There is no evidence that the applicant's wife has any medical conditions that would be harmed by relocation to Mexico. The record does not include any evidence of financial or other types of hardship that the applicant's wife would experience by relocation to Mexico. Additionally, any adjustment difficulties that the applicant's stepchildren would face upon relocation to Mexico are not considered in the extreme hardship analysis, except to the extent that the difficulties impact the applicant's wife. Here, the applicant has failed to show that any difficulties his stepchildren will have in Mexico, would cause extreme hardship to his wife, the qualifying relative. Accordingly, the AAO does not find the record before it to demonstrate that the applicant's wife would suffer extreme hardship upon relocation to Mexico.

In this case, although the applicant has established that his wife has suffered extreme hardship as a result of family separation, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise 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. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant 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. 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.