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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: JAN 1 2 2010

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 APPLICANT:

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).

Ellen C. Johnson

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 applicant is a native and citizen of Mexico who resided in the United States from March 2000, when he entered the country without inspection, to April 2006, when he returned to Mexico. He was found to be inadmissible to the United States under 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 for a period of one year or more. The applicant is the son of a Lawful Permanent Resident 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 and reside with his mother and siblings.

The district director 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 District Director* dated December 29, 2006.

On appeal, counsel for the applicant asserts that the applicant's mother depends on the applicant for emotional and financial assistance and she needs the applicant to provide her with additional income and assistance in the care of her five other children, for whom the applicant serves as a father figure. *See Brief in Support of Appeal* at 2. Counsel states that the applicant's mother is experiencing depression and anxiety due to separation from the applicant and because of the financial strain and concern for her family that has resulted from his absence. *Brief* at 2. Counsel further claims that the applicant's mother would suffer extreme hardship if she relocated to Mexico because she would be separated from her five children and would lose everything she has worked for in the United States. *Brief* at 2. In support of the appeal counsel submitted affidavits from the applicant's mother and siblings, a letter from a psychologist who evaluated the applicant's mother, a letter from the applicant's mother's employer, copies of income tax returns, documentation related to the purchase of a home by the applicant's mother, copies of birth certificates for the applicant's siblings, and a letter from the church attended by the applicant and his family. 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.

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

A waiver of the bar to admission resulting from violation of 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. 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).

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.

In the present case, the record reflects that the applicant is a twenty-eight year-old native and citizen of Mexico who resided in the United States from March 2000, when he entered the country without inspection, to April 2006, when he returned to Mexico. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of one year or more. The applicant's mother is a forty-five year-old native and citizen of Mexico and lawful permanent resident. The applicant currently resides in Mexico and his mother and five siblings reside in Arkansas.

Counsel asserts that the applicant's mother would experience hardship if she relocated to Mexico because she would be separated from her five children in the United States and would lose everything she has worked for. In support of this assertion counsel submitted an affidavit from the applicant's mother, documentation concerning her employment and a home she owns, and birth certificates and other documentation for her five children, four of whom are United States citizens and one of whom was admitted with a V-1 visa. The applicant's mother states that it would be impossible for her to move to Mexico because her other children reside in the United States and she owns a vehicle and a house in Arkansas that she would lose if she left the United States. The record indicates that the applicant has four siblings born in the United States between 1987 and 1990, and his mother has resided in the Untied States for over twenty years. It appears that in light of her length of residence in the United States as well as her extensive family ties, the applicant's mother would suffer extreme hardship if she were to relocate to Mexico. As noted above, separation from close family members is a primary concern is assessing extreme hardship. *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998). Separation from her family in the United States combined with any difficulty the applicant's mother would have finding employment and adjusting to economic and social conditions in Mexico after over twenty years in the United States would rise to the level of extreme hardship.

Counsel for the applicant states that the applicant's mother is suffering emotional hardship as a result of separation from the applicant, and in support of this assertion submitted an affidavit from the applicant's mother and a letter from a psychologist who evaluated her. The applicant's mother states that their family is extremely close and she and the applicant's five younger siblings rely on him for comfort and support. *See Affidavit of* dated July 5, 2007. She further states that she and the applicant have an extremely close bond because his father did not take care of him after he was born, and being apart from him is making her anxious and depressed. She further states, "My family is also experiencing emotional harm in Raul's absence. His brothers and sisters are missing him because we have always been together as a family." *Affidavit of*

A letter from , a clinical psychologist who evaluated the applicant's mother on June 28, 2007, states that she had symptoms of depression and anxiety, which she reports to be directly related to the absence of the applicant, and contains a diagnosis of with Adjustment Disorder with Anxiety and Depression. *Letter from* *Ph.D.* dated July 3, 2007. The input of any mental health professional is respected and valued in assessing a claim of emotional hardship.

However, the AAO notes that although the submitted evaluation is based on a psychological evaluation of the applicant's mother, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's mother or any history of treatment for depression or anxiety. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight that would result from an established relationship with the psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Further, there is no evidence submitted with the waiver application or appeal that Dr. or any other mental health professional provided any follow-up treatment, despite the diagnosis of adjustment disorder with anxiety and depression.

The applicant's mother states that she is suffering emotional hardship due to separation from the applicant. The evidence on the record is insufficient to establish that any emotional difficulties she is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her child's exclusion or removal. Although the depth of her distress caused by separation from her son 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.

The applicant's mother states that she is suffering financial hardship and cannot support her five children without the applicant's financial assistance. She further states,

> I currently earn $9.00 per hour working full time at a poultry factory. My current income is much less that Raul's income potential in the United States. Telephone calls are much more expensive now that Raul is in Mexico. Even working full time, I am not able to manage without my son's help and assistance. *Affidavit of*

The applicant's mother further states that the applicant plans to study mechanical engineering "so that he can ease the financial burden on . . . [his] family." *Affidavit of* z. Although income tax returns for the applicant's mother were submitted, no documentation of the applicant's past income was submitted and no evidence was submitted to establish that the applicant had taken steps towards studying to become an engineer. 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)). 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 resulting from the loss of the applicant's income appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's mother. *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 evidence on the record is insufficient to establish that any emotional or financial hardship the applicant's mother would experience if she remains in the United States is other than 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 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 lawful permanent resident mother 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.