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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

PUBLIC COPY

#6

[redacted]

FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: JUL 20 2010

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 her last departure from the United States. The applicant is married to a United States citizen 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 her husband and three children.

The director found that the applicant failed to establish extreme hardship to her spouse, and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 4, 2007. On appeal, the applicant's husband asserts that the denial of the waiver application imposes extreme hardship on him and his children. *See Form I-290B, Notice of Appeal*, dated December 20, 2007.

The record includes, but is not limited to, two undated statements from the applicant's husband; an undated statement from the applicant; supportive statements from family members, friends and teachers from the applicant's children's school; a copy of a Deed of Trust; a copy of a mortgage statement; copies of the couple's U.S. Individual Income Tax Returns (Form 1040) for the years 2003 through 2005; and copies of the applicant's husband's W-2 Wage and Tax Statements for 2004 and 2005. 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 she entered the United States without being inspected and admitted or paroled in April 1998. On May 20, 2002, the applicant's United States citizen husband filed a Form I-130 on the applicant's behalf. On June 14, 2004, the Form I-130 was approved. On October 9, 2006, the applicant voluntarily departed the United States. On October 25, 2006, the applicant filed a Form I-601. On December 4, 2007, the District Director denied the Form I-601, finding that the applicant failed to establish extreme hardship to her spouse. The applicant accrued unlawful presence from April 1998, until October 9, 2006, when she 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). 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 herself 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 children 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 her 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 husband is the only qualifying relative, and hardship to the applicant's children 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*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would

relocate. *Id.* at 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

> 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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." *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 mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant's spouse, [redacted] is a 31-year-old native and citizen of the United States. The applicant and her husband were married on April 23, 1999, in Ellis County, Texas, and have three children together. The applicant's husband states that he is suffering extreme emotional and financial hardships as a result of the denial of the waiver application.

Regarding the emotional hardship of separation, the applicant's spouse states that he needs the applicant to help him care for their children in the United States. The applicant's husband states that while he worked a 14 hour swing shift, the applicant took care of their home and the children, helped them with their homework, and made certain that they got to school and to their medical appointments. The applicant's husband states that after the applicant left for Mexico, his children missed their mother so much that he has had to call on his own mother several times a week to help him soothe the children to sleep because they want their mother. The applicant's husband states that it hurts him very much to see his children crying for their mother and there is nothing he can do about it. The applicant's husband also states that he loves the applicant very much and cannot bear to think of his life apart from the applicant. The applicant's husband further states that as a result of

the waiver denial, his wife has to remain in Mexico with his younger daughter while he is in the United States with his two older daughters. *See Undated Statements from* [redacted]. The applicant states that she is the main caretaker for their home and their children, making sure that the children get to school, help them with their homework and ensure that they attend all their medical appointments. The applicant states that she helps her husband by taking care of the children and other responsibilities at home so that her husband can go to work and not worry about those things. *See Undated Statement from* [redacted] The record includes supportive statements from family members, friends and teachers attesting to the hardships the applicant's husband and his children are facing with the absence of the applicant. For example, [redacted], the first grade teacher for one of the applicant's daughters [redacted] at [redacted] in Midlothian, Texas, states that the applicant has shown the best interest in Alexes' educational needs, that her bond with her children is very strong and that it would be detrimental if the applicant is taken away from her children. *See Undated To Whom It My Concern Statement from* [redacted] *1st* [redacted]

Regarding the financial hardship of separation, the applicant's husband states that while the applicant was in the United States, she cared for their daughters as well as worked full time to help with the family's financial obligations. However, since the applicant's departure to Mexico, he has been the sole provider for his family and must send money to Mexico for his wife and youngest daughter, and pay for day care and a babysitter for his two older daughters because he works late and is not there for them when they come back from school. The applicant's husband further states "I am literally weeks from losing my house and my car." *See Undated Statements from* [redacted] The record includes copies of the applicant's husband's W-2 Wage and Tax Statements from [redacted], copies of the couple's U.S. Individual Income Tax Returns, as well as a copy of a mortgage statement.

While the AAO acknowledges the claims made by the applicant's husband, the record does not include detailed information of the family's income and expenses to show that the financial challenges faced by the applicant's husband amount to extreme hardship. The record however, contains statements from the applicant's husband, family members and teachers attesting to the emotional hardship the applicant's husband is undergoing as a result of family separation, and the struggles the applicant's children are undergoing without their mother and the impact this has on the applicant's spouse. The AAO notes that although hardships faced by the applicant's children as a result of family separation are not calculated in the extreme hardship analysis, the evidence in this case, when considered in the totality of the circumstances, is sufficient to demonstrate that the applicant's husband is experiencing extreme hardship as a result of the applicant's absence from the family.

Regarding relocation, no claim was made that the applicant's husband would suffer extreme hardship if he relocated to Mexico to be with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's husband would suffer extreme hardship if he moved to Mexico.

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