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

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PUBLIC COPY

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FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: JUN 21 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:

[redacted]

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,

for 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

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 November 23, 2007. On appeal, counsel contends that the denial of the waiver imposes extreme hardship on the applicant's husband. *See Form I-290B, Notice of Appeal and Accompanying brief*, dated January 17, 2008.

The record includes, but is not limited to, letters from the applicant's husband; counsel's brief in support of appeal; a letter from the applicant; and a psychological report for the applicant. 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 in July 2004 without being inspected and admitted or paroled. On January 7, 2005, the applicant's United States citizen husband filed a Form I-130 on the applicant's behalf. On February 25, 2005, the Form I-130 was approved. In July 2006, the applicant voluntarily departed the United States. On September 11, 2006, the applicant filed a Form I-601. On November 23, 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 July 2004, when she illegally entered the United States until July 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). 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 herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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 husband is the only qualifying relative. 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 48-year-old native of Mexico and citizen of the United States. The applicant and her husband were married in Mexico on June 11, 2003, and do not have any children. The applicant's spouse asserts that he is suffering extreme emotional and financial hardships as a result of the denial of his wife's waiver application.

Regarding the emotional hardship of separation, the applicant's spouse states that he needs the applicant to be with him because they are married and have to be together according to "the ecclesiastical rules and ecclesiastical principals." The applicant's husband states that the applicant has "brought purpose to my life." *See Statement from* [redacted] *December 17, 2007.* In an undated statement, counsel states that the separation has caused hardship to the applicant's husband because he has been unable to maintain a permanent home, or job while traveling to Mexico to visit his wife. *See Counsel Brief in Support of Appeal.* Counsel also states that the separation has caused serious strain on the couple's relationship, that the applicant suffers from severe depression, that her daily life is disrupted, and that she is unable to attend to daily matters. *Id.* The applicant states that the separation from her husband and other family members has caused her to be depressed. *See Statement from* [redacted] dated December 17, 2007. The applicant submitted a psychological report from Mexico indicating that she has been diagnosed with anxiety disorder and recommends that she reunite with her husband because the anxiety was caused in part by separation from her husband and her family. In addition, it was recommended that she receive emotional support and therapy sessions. *See Psychological Information by* [redacted] dated November 21, 2007.

Regarding the financial hardship of separation, the applicant's husband states that the separation has caused him financial hardship because he has spent a lot of money traveling to Mexico to visit the applicant, that he is unable to maintain a permanent job, a house to live in or a vehicle to transport himself because of the cost of the trips to Mexico to visit his wife. *See Statement from [redacted], December 17, 2007.* The record does not include evidence of the family's income and expenses, or any other documentation to support the applicant's husband's claims of financial hardship.

Although the record shows that separation from the applicant has caused emotional and financial hardships to the applicant's husband, the evidence in this record is not sufficient to demonstrate that the challenges encountered by the applicant's husband, considered cumulatively, meet the extreme hardship standard. First, while the emotional hardship of separation is apparent from the applicant's husband's letters, the applicant did not provide medical records, detailed testimony, or other evidence to show that any emotional or psychological hardships he faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Second, given the lack of information in the record regarding the family's income and expenses, the AAO cannot conclude that family separation has caused extreme financial hardship to the applicant's husband. Finally, hardships faced by the applicant herself as a result of family separation are irrelevant to the extreme hardship analysis of the waiver application. Accordingly, the evidence in the record does establish that the applicant's husband's hardship rises to the level of extreme hardship.

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 sum, although the applicant's spouse claims hardships based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.