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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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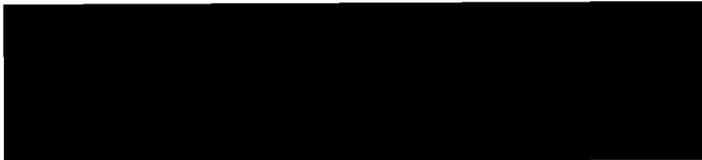
FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ)
(CDJ 2005 514 256 relates)

Date: **MAR 29 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 (the 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. The matter 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 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. The applicant is married to a naturalized U.S. citizen and 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 with his wife in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated February 9, 2007.

The record contains, *inter alia*: a copy of a foreclosure letter to the applicant's wife, [REDACTED] a copy of [REDACTED] mother's death certificate; a letter from [REDACTED] counselor; a copy of [REDACTED] pay stub; copies of bills; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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 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 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.

In this case, the district director found, and the applicant admits, that he entered the United States in February 1998 without inspection and remained until January 2006. *See Applicant's Brief on Appeal* at 1, dated April 5, 2007 (stating the applicant is inadmissible because he resided unlawfully in the United States for more than one year). The applicant accrued unlawful presence beginning in April 1998, when he turned eighteen years old, until his departure in January 2006. Therefore, the applicant accrued unlawful presence for over seven years. He now seeks admission within ten years of his 2006 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more.

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 U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: 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.

In this case, counsel contends that the applicant and his wife, [REDACTED], have a U.S. citizen child together who is six years old. According to counsel, the couple's child has been living in Mexico with the applicant because [REDACTED] who earns \$8.75 per hour as a housekeeper, could not afford to pay for child care in the United States and does not have any relatives in the United States to watch their child. Counsel states that the applicant has been unable to find gainful employment in Mexico aside from working as a ranch hand in exchange for room and board for him and his daughter. Counsel contends [REDACTED] employment provides for all of her family's expenses and that she earns \$1,200 per month. In addition, according to counsel, [REDACTED] has developed psychosis serious enough to require psychotherapy and medical treatment." In addition, counsel contends [REDACTED] mother died on November 9, 2008, and that she "was the sole source of moral support to [REDACTED] *Applicant's Brief on Appeal, supra; Letter from [REDACTED]* dated December 28, 2009.

According to a letter from a counselor, [REDACTED] has been seen twice for psychotherapy sessions due to symptoms related to depression and anxiety. The letter states that [REDACTED] reports that these symptoms are directly related to issues surrounding the separation from her husband and her 3-year-old daughter, [REDACTED]" The counselor further states that "[d]ue to the severity of stressors, . . . it is imperative that she also seek additional treatment. A recommendation that she see a physician to rule

out the need for psychotropic medication has been made” and that she had an appointment with her doctor on April 16, 2007. *Letter from* [REDACTED] dated March 26, 2007.

After a careful review of the record, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if her husband’s waiver application were denied. Although there are two letters from [REDACTED] and one letter from the applicant in the record, these letters are written in Spanish and have not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. Consequently, these letters cannot be considered.

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family’s circumstances. However, [REDACTED] does not discuss the possibility of moving back to Mexico, where she was born, to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

To the extent counsel contends [REDACTED] mother was purportedly [REDACTED] sole source of moral support and that [REDACTED] has developed psychosis requiring medical treatment, *Applicant’s Brief on Appeal, supra*; *Letter from* [REDACTED] *supra*, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). With respect to the counselor’s letter, although the input of any mental health professional is respected and valuable, the AAO notes that the letter is based on two sessions the counselor had with [REDACTED] between March 15, 2007, and March 26, 2007. The record fails to reflect an ongoing relationship between a mental health professional and the applicant’s wife. Furthermore, the counselor’s letter indicates that [REDACTED] anxiety and depression are related to her separation from her husband and child, but does not comment on whether her symptoms might lessen if she relocated to Mexico to be with her family, and the applicant does not discuss the availability of mental health care in Mexico. Moreover, the counselor did not diagnose [REDACTED] with psychosis; rather she stated that [REDACTED] has an appointment to see her doctor to rule out the

need for psychotropic medication. Significantly, although additional documentation was submitted to the AAO on December 28, 2009, the applicant has not submitted more recent evidence regarding his wife's mental health, such as a letter from her physician discussing her condition, need for medication and further treatment or evidence she has continued with counseling as recommended.

Regarding the applicant's financial hardship claim, although the record contains a copy of [REDACTED]'s pay stub, copies of three bills, and a letter stating that the bank was foreclosing upon her house, there is no evidence addressing to what extent the applicant helped to support the family while he was in the country. The applicant has not submitted evidence addressing his wages, such as a letter from his previous employer, a pay stub, or tax documents. In addition, the letter from the bank regarding the foreclosure is addressed to [REDACTED] and "[REDACTED]" regarding their mortgage on the property located at [REDACTED]. It is unclear who [REDACTED] is and the record indicates [REDACTED] resides at [REDACTED]. Therefore, it is unknown whether [REDACTED] owns more than one house and the applicant has not submitted evidence regarding rent or mortgage payments and balance for either property. Without more detailed information, the AAO is not in the position to attribute any financial difficulties [REDACTED] may be experiencing to the applicant's departure. In any event, even assuming some economic difficulty, the mere showing of economic harm to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. *See* 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.