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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: MEXICO CITY Date: MAY 13 2009
(CDJ 2005 615 954 relates)

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:

[redacted]

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).

John F. Grissom
Acting 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 U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with his wife and child in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated November 22, 2007.

On appeal, counsel contends that the district director erred in concluding the applicant failed to establish extreme hardship if his waiver application were denied.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [redacted] indicating they were married on December 30, 2004; a psychological report for [redacted] two letters from [redacted] numerous letters of support from [redacted] friends and family; medical documentation; a copy of [redacted] teaching license; the U.S. Department of State's Consular Information Sheet for Mexico and other background materials addressing conditions in Mexico; copies of the couple's phone and credit card bills; a copy of [redacted] mortgage statement; photographs of the applicant and his family; and a copy of 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:

> 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 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 record indicates, and counsel does not contest, that the applicant entered the United States in October 2002 without inspection and remained until January 2007. He now seeks admission within ten years of his 2007 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 more than one year.

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. 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, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals 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, the applicant's wife, [redacted], a teacher, states that since her husband's departure, she is struggling to work and take care of her son. She states she usually has one to three hours of grading and preparation to do each night and that she is no longer able to connect with her colleagues in the teacher's lounge, as she had previously done, because she is working all the time and does not want to answer questions about the status of her husband's immigration case. [redacted] also claims that when her husband was in the United States, he contributed to household expenses. She claims that in addition to losing his income, she has incurred hundreds of dollars in babysitting expenses and will continue to incur other expenses, such as mowing the yard. In addition, [redacted] states she is depressed and that she constantly wakes up during the night. She states that the lack of sleep puts her in danger of falling asleep at the wheel. [redacted] states she cannot concentrate at work because she is constantly worrying about her husband in Mexico. She claims she will probably have to start counseling soon as she "feel[s] like a time bomb just waiting to explode." [redacted] also claims that

she and her son have visited the applicant in Mexico twice, and that each time, the couple's son initially rejected his father. states she and her son cannot go live in Mexico to be with her husband because the town where he is from is a very poor area. [redacted] fears the water in her husband's family's house is unsanitary as the family raises chickens and pigs right next to the house, possibly contaminating the well water, and states that there are a pack of turkeys that roam around freely, and that mosquitoes and flies are everywhere. She also states her husband's family turns off the refrigerator at night to conserve electricity. In addition, [redacted] states the closest hospital is an hour away. She states she contracted Hepatitis A after visiting her husband in Mexico and claims her son has a history of getting ear infections and had tubes put in his ears in February 2007. [redacted] also states that her son has asthma and uses an inhaler. [redacted] states that she herself is allergic to numerous things, that she takes allergy medication on a daily basis, and that she occasionally uses an inhaler as well. She also has an astigmatism and requires an eye examination every year. Moreover, [redacted] states her family is very close. She states she wants her son to have the educational opportunities available to him in the United States. In addition, she claims she must complete courses to maintain her teaching certification and that the required courses are not offered in Mexico. *See Letters from* [redacted] dated January 8, 2008, and February 12, 2007.

Numerous letters of support in the record describe depression. *See, e.g., Letter from* [redacted], dated January 12, 2008 (stating has pulled away from her friends, family, and co-workers and has become more isolated); *Letter from* dated January 11, 2008 (stating [redacted] has isolated herself from the other teachers at school and is losing social contact with her friends); *Letter from* [redacted], dated January 11, 2008 (stating [redacted] barely eats lunch, is much more withdrawn, and appears to be depressed); *Letter from* [redacted], dated January 11, 2008 (stating [redacted] "no longer connects with her friends"); *Letter from* [redacted], dated January 11, 2008 (stating [redacted] has been unstable, cries at least twice a week at school, and has increased absenteeism); *Letter from* [redacted] *and* [redacted], dated January 10, 2008 (stating [redacted] has "become less involved in life," "always has dark circles under her eyes and has gained weight[, and] constantly complains of headaches and of being tired."); *Letter from* [redacted], dated January 7, 2008 (stating [redacted] is depressed and "has shown weight gain and tearfulness"); *Letter from* [redacted] dated January 4, 2008 (stating [redacted] is despondent and depressed); *Letter from* [redacted], undated ("The emotional stress is starting to bring her down."); *Letter from* [redacted] *and* [redacted], undated ("She is a very depressed young lady. . . . [H]er tears are many. . . ."). In addition, the letters of support describe the applicant as "a fine young man, decent and hard working." *Letter from* [redacted] *supra; see also Letter from* [redacted] *and* [redacted], dated January 12, 2008 (describing the applicant as a conscientious husband and engaged father).

The psychological report in the record indicates that since her husband's departure, [redacted] has had difficulty falling asleep and wakes up during the night. The report states [redacted] has gained more than fifty pounds in the past year, has little energy, and is "sad and jittery" all the time. The psychologist diagnosed [redacted] with major depressive disorder and, "[b]ecause of the extent of her depressive symptomatology and her serious weight gain," recommended she see a physician. In addition, the psychologist diagnosed [redacted] son with separation anxiety disorder, which,

according to the psychologist, will become exacerbated the longer he is separated from his father. *Affidavit of* [redacted] dated January 7, 2008.

Medical documentation in the record shows that the couple's son was treated in the Emergency Department on February 4, 2007, for an ear infection, and was treated in Urgent Care for wheezing due to his asthma and an ear infection on June 19, 2007. *Children's Hospital, Urgent Care, Instructions and Follow-Up*, dated June 19, 2007; *Children's Hospital, Emergency Department, Instructions and Follow-Up*, dated Feb 4, 2007. The record also includes copies of hospital bills, indicating the amount insurance covered for the couple's son's medical expenses. A prescription from Children's Hospital prescribed a "spacer with mask" for the couple's son. *Prescription by* [redacted] dated June 19, 2007.

After a careful review of the evidence, it is not evident from the record that the applicant's wife, [redacted] would suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO finds that if had to move to Mexico to be with her husband, she would experience extreme hardship. The record shows that after having visited the applicant in Mexico, [redacted] contracted Hepatitis A. The record also shows that the couple's son has frequent ear infections and asthma and that the closest hospital is one hour away from the applicant's family's home in Mexico. Relocating to Mexico would disrupt the continuity of health care for both [redacted] and her son. In addition, it is evident from the record that if [redacted] moved to Mexico, she would eventually lose her teaching license, a license that the record shows is valid for only five years, as she would be unable to continue taking the courses required in order to renew her license. Furthermore, [redacted], who was born in the United States, would be separated from her entire family with whom she is very close. In sum, the hardship [redacted] would experience if she had to move to Mexico is extreme, going well beyond those hardships ordinarily associated with deportation.

Nonetheless, [redacted] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the record contains ample evidence from [redacted]s friends and family members describing her depression and concluding that the couple's son needs his father, there is no evidence the hardship [redacted] is experiencing is any greater than those hardships ordinarily associated with deportation. There is no evidence [redacted] or her son have any on-going physical or mental impairment requiring the applicant's assistance and, in fact, there is no suggestion she required his help when she contracted Hepatitis A. There is no evidence that either [redacted] or her son have undergone counseling. There is no evidence [redacted] has had anything more serious that "passing thoughts of suicide," which, according to the Psychologist, [redacted] would never actually act upon. *Affidavit of* [redacted] *supra.* Indeed, [redacted] does not claim she is suicidal. It is evident from the record [redacted] has an extensive support network consisting of her family, friends, co-workers, and neighbors. While the AAO recognizes the challenges of single parenthood, Ms. [redacted] hardship does not rise to the level of extreme hardship based on the record. Although the AAO is sympathetic to the family's circumstances, if [redacted] remains in the United States, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to

the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals 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).

The AAO notes that although the input of any mental health professional is respected and valuable, the psychological report in the record is based on a single interview the Psychologist conducted with [redacted] and her son on January 7, 2008. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview and based primarily on self-reported conditions, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the therapist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Regarding financial hardship claim, although a letter in the record from [redacted] accountant states that the couple filed taxes, *Letter from* [redacted], dated January 7, 2008, there is no evidence addressing to what extent, if any, the applicant helped to support the family while he was in the country. There are no tax documents in the record, no evidence from employers verifying the applicant's past or current employment, and no documentation regarding his wages. 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 hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also 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 spouse 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.