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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO
(CDJ 2004 620 100 RELATES)

Date APR 24 2007

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(a)(9)(B) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Ciudad Juarez, Mexico. The matter 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 was found to be inadmissible to the United States pursuant to § 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 U.S. citizen and the mother of a U.S. citizen child. She is the beneficiary of an approved petition for alien relative. She seeks a waiver of inadmissibility in order to reside in the United States with her husband and child.

The officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. On appeal, the applicant submits a statement written by her husband, who asserts that he is suffering due to the separation from his wife and child, who live in Mexico. The record also contains evidence submitted with the original waiver application, including a statement by the applicant's husband and documents regarding the applicant's and their child's activities in the United States. The AAO has reviewed the entire body of evidence and concludes that the applicant has not demonstrated that her inadmissibility will cause her husband to suffer extreme hardship.

Section 212(a)(9)(B) 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 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 applicant entered the United States without inspection in 1996, and she remained here without authorization until February 28, 2005. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until her 2005 departure. She now seeks permission to reside in the United States within ten years of her departure. The applicant is, therefore, inadmissible to the United States under § 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A § 212(a)(9)(B)(v) waiver of the bar to admission resulting from § 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. Hardship to the alien herself or to her child is not considered in § 212(a)(9)(B)(v) waiver proceedings, except as it may affect a 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).

In that the applicant's spouse is not required to reside outside the United States based on a denial of the applicant's waiver request, the applicant must establish that he would suffer extreme hardship whether he remains in the United States or joins her in Mexico.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of 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 his September 24, 2005 statement on appeal, which is identical to his statement of August 5, 2005, the applicant's husband asserts that the applicant's continued absence would cause him to suffer both emotional and economic hardship. He expresses concern for his daughter's welfare in Mexico, and states that he will also suffer if he goes to Mexico with his family. An undated statement from the applicant's spouse discusses his attachment to his wife and how his separation from her would devastate him. However, there is no evidence on the record regarding the medical and/or psychological impact of the applicant's absence on her spouse. The applicant has also failed to submit evidence to establish the financial hardships that would be experienced by her spouse as a result of her continued inadmissibility.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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), defined extreme hardship as hardship that exceeds that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the 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. It is also noted that the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The documentation on the record fails to establish the impact of the applicant's inadmissibility on her spouse. Although the AAO recognizes that the applicant's husband is experiencing anxiety and loneliness as a result of his separation from the applicant, the record does not demonstrate that his situation is different from that of other individuals separated as a result of removal or inadmissibility. Accordingly, the applicant has not established that her spouse would suffer extreme hardship if her waiver request is denied. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.