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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: CIUDAD JUAREZ Date: FEB 25 2010

(CDJ 2004 823 982 relates)

IN RE: [redacted]

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

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Ciudad Juarez. 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 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 for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The officer-in-charge found that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the Officer-in-Charge,* dated January 23, 2007.

On appeal, counsel for the applicant asserts that the applicant's husband will endure extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel*, dated February 22, 2007.

The record contains a brief from counsel; statements from the applicant's husband, friends of the applicant and her husband, the applicant's husband's foreman, the applicant's sister-in-law, and the applicant's and her husband's reverend; medical documentation for the applicant and her husband; a statement from the applicant's husband's employer; a copy of the applicant's and her husband's insurance card; documentation of the applicant's husband's ownership of a home; a letter from the administrator of an English as a Second Language (ESL) program in which the applicant has participated, and; documentation regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the 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 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 record reflects that the applicant entered the United States without inspection in or about May 2002. She remained until or about December 2005. Accordingly, the applicant accrued over three years of unlawful presence in the United States. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant does not contest her inadmissibility on appeal.

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. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

On appeal, counsel asserts that the applicant's husband will endure emotional, medical, and financial hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel* at 1.

Counsel states that the applicant and her husband purchased a home in Wisconsin in December 2002. *Id.* at 1. Counsel asserts that the applicant's husband is struggling to support the applicant in Mexico while meeting his needs in the United States, including a mortgage, bills, and other expenses. *Id.* at 2.

Counsel provides that the applicant's husband has suffered adverse health conditions since the applicant's departure to Mexico, and that he has been under the care of a physician for anxiety-related problems including headache and heart palpitations. *Id.* at 1-2. Counsel contends that these

conditions and the emotional distress due to separation from the applicant are affecting the applicant's husband's job performance and general mental state. *Id.* at 2.

Counsel states that the applicant and her husband have been trying to have children, but that the applicant has miscarried twice and requires treatment for elevated hormone levels. *Id.* at 1-2. Counsel asserts that the applicant was covered under her husband's medical insurance when she was in the United States, but that the coverage does not extend to Mexico. *Id.* at 2. Counsel states that the applicant's husband will be unable to fulfill his wish to have a family should he join the applicant in Mexico, as they will be unable to afford treatment for the applicant to address her elevated hormone levels. *Id.* at 2-3.

Counsel contends that the applicant's husband will suffer the loss of his job and career path should he relocate to Mexico. *Id.* at 3. Counsel explains that the applicant's husband has worked for a roofing company for over seven years, and he has invested time in a four-year apprenticeship training program that he would be unable to complete if he relocates. *Id.* Counsel asserts that the applicant's husband will be unable to find comparable work in Mexico. *Id.*

Counsel states that the applicant's husband has significant ties to Milwaukee, including the ownership of his home, participation in his church, and relationships within his community. *Id.*

The applicant's husband describes the history of his relationship with the applicant beginning in March 2001. *Statement from the Applicant's Husband*, dated February 22, 2007. He expresses that he feels depressed, sad, and lonely without the applicant. *Id.* at 1. He states that he has experienced anxiety which has caused physical symptoms including headaches and chest pains. *Id.* at 2. He provides that the applicant used to prepare healthy food for him to lower his cholesterol level, but that it has gone back up since the applicant departed the United States. *Id.*

The applicant's husband states that he has had difficulty meeting his financial obligations in the applicant's absence, and that he has lost wages due to the need to go visit her. *Id.*

The applicant's husband expresses that he wishes to have a family with the applicant. *Id.* He states that he will have to move to Mexico if the applicant is not permitted to return, and he will lose everything he has worked for in the United States. *Id.* He explains that he and the applicant are from small towns in Jalisco, Mexico where the only employment is low-paying agricultural work. *Id.* He indicates that he would lose his employment in the United States in which he has invested much effort. *Id.* at 3. He states that he will lose his health insurance, and he would be unable to afford care in Mexico should his present symptoms continue or should he become seriously ill. *Id.*

The applicant submits a letter from her husband's physician, [redacted] in which [redacted] states that the applicant's husband has been under his care for the last year for fatigue, headaches, sleep problems, heart palpitations and anxiety with an abnormal electrocardiogram (ECG). *Letter from* [redacted] dated February 21, 2007. [redacted] states his opinion that the applicant's husband's problems with sleep disturbance and anxiety are related to the applicant's absence. *Id.* at 1.

The applicant provided a letter from a physician in the United States, [redacted], in which [redacted] stated that the applicant was under treatment for hyperprolactinemia and galactorrhea. *Letter from* [redacted] dated February 21, 2007. He indicated that the applicant's galactorrhea had resolved and that she was taking medication for hyperprolactinemia that appeared to be working well and did not require regular office visits. *Id.* at 1.

The applicant provided a letter from the office manager for her husband's employer who indicates that her husband is a skilled and valued employee who earns $23.35 per hour for 40 hours per week. *Letter from* [redacted] dated February 8, 2007. The office manager reports that the applicant's husband's performance has been affected by his emotional hardship due to the applicant's absence. *Id.* at 1.

The applicant provided numerous letters from her and her husband's friends, her husband's foreman, her husband's sister, their reverend, and the administrator of an ESL program who attest to the emotional hardship her husband is enduring due to separation from the applicant.

Upon review, the applicant has not shown that her husband will suffer extreme hardship should she be prohibited from residing in the United States at the present time. The applicant has not established that her husband will endure extreme hardship should he remain in the United States. The applicant's husband expresses that he is close with the applicant and that he is experiencing emotional hardship due to being separated from her. The AAO has carefully examined the letter from [redacted] regarding the applicant's husband's health that notes sleep disturbance and anxiety that [redacted] attributes to the applicant's absence. However, the letter from [redacted] does not indicate whether the applicant's husband requires follow-up care, and it is not sufficient evidence to show that the applicant's husband is encountering emotional or physical challenges that rise to an extreme level.

The applicant provided letters to support that her husband's work performance was affected by his emotional hardship due to separation from her. Yet, the letters do not show that her husband is unable to perform his responsibilities or that his income is threatened.

The applicant's husband states that he wishes to have a family with the applicant in the United States. It is evident that their efforts to have children would be hindered should they reside in separate countries. However, the applicant has not shown that her husband would encounter extreme hardship should he relocate to Mexico, thus denial of the present waiver application does not deprive the applicant's husband of the opportunity to have children. This issue is discussed further below.

The AAO acknowledges that the separation of spouses often results in significant emotional suffering, and that the applicant's husband is enduring hardship due to the applicant's absence. However, the applicant has not distinguished her husband's emotional hardship from that which is commonly expected when spouses reside apart due to inadmissibility. Federal court and administrative decisions have held that the common results of deportation or exclusion 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), 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. *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 noted that the applicant has not provided financial documentation, such as banking, tax, or income records for herself or her husband. Thus, the record does not show that her husband will endure economic challenges should he remain in the United States without the applicant.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he remain in the United States without her.

The applicant also has not established that her husband will suffer extreme hardship should he relocate to Mexico to maintain family unity. As discussed above, the applicant's husband expresses that he wishes to have a family with the applicant, and that they are unable to do so unless the applicant resides in the United States and receives medical treatment for elevated hormone levels. [redacted] indicated that the applicant was taking medication for hyperprolactinemia that appeared to be working well and did not require regular office visits. The applicant has not shown that the medication she takes is unavailable in Mexico, or that she would be unable to obtain it should she reside there. Thus, the applicant has not shown that she will encounter fertility problems if the present waiver application is denied, or that she and her husband would be deprived of the opportunity to have children.

The applicant has shown that her husband has invested much effort in his employment. The AAO acknowledges that the applicant's husband does not wish to relinquish his employment, yet the applicant has not shown that her husband would be unable to practice his roofing trade in Mexico and earn sufficient income to meet his and the applicant's needs. It is evident that the applicant's husband would endure emotional and financial impacts due to leaving his position in the United States, yet this is a common result when an individual relocates abroad due to the inadmissibility of a spouse.

The applicant's husband owns a home in the United States. It is understood that the applicant's husband will endure emotional consequences should he depart his home unwillingly. Yet, the applicant has not established that her husband would incur financial loss should he sell or rent his home in the United States in order to relocate to Mexico. As noted above, the applicant has not provided any financial documentation of her or her husband's economic status.

The applicant's husband has ties to his community in the United States including numerous acquaintances who have written statements to support the present application for a waiver. The AAO acknowledges that the applicant's husband would endure emotional hardship should he depart

his community. However, such separation is a common result when an individual relocates abroad to join an inadmissible spouse.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he join her in Mexico.

The AAO recognizes that the applicant's husband is enduring significant emotional hardship due to separation from the applicant. However, the applicant has not shown that her husband must remain in the United States and prolong their separation. Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver under section 212(a)(9)(B)(v) of the Act. 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 regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.