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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]

JUL 15 2009

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
(CDJ 2004 760 149)

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:

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.

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 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 enter the United States and reside with her U.S. citizen husband and children.

The district director 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 District Director,* dated June 26, 2006.

On appeal, the applicant's husband asserts that he will suffer hardship should the applicant be prohibited from entering the United States. *Statement from the Applicant's Husband on Form I-290B*, received April 8, 2006.

The record contains statements from the applicant's husband; medical documentation for the applicant's son; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's marriage certificate, and; information 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)(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 record reflects that the applicant entered the United States without inspection in or about 1986. She remained until she voluntarily departed in or about 2005. Accordingly, the applicant accrued over eight years of unlawful presence in the United States, from the date the unlawful presence provisions in the Act took effect on April 1, 1997 until she departed in 2005. 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)(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 pursuant to section 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.

On appeal, the applicant's husband asserts that he will suffer hardship should the applicant be prohibited from entering the United States. *Statement from the Applicant's Husband on Form I-290B*, received April 8, 2006. He explained that his son is residing in Mexico with the applicant which caused his son to miss his scheduled hernia surgery. *Id.* at 1. He states that he needs the applicant to return to the United States so his son can receive surgery and the applicant can take care of him as he recovers. *Id.* The applicant's husband provides that he must work to support his family. *Id.* He notes that his 13-year-old son is residing with him, yet he has concern for his son's well-being due to his son spending time alone with no supervision. *Id.*

The applicant's husband previously stated that he became a permanent resident on January 10, 1997, and he became a U.S. citizen on May 26, 2004. *Prior Statement from the Applicant's Husband,* dated October 7, 2005. He indicated that he married the applicant on December 21, 2001. *Id.* at 1.

He noted that they have three children, all of whom were born in the United States. *Id.* He explained that he has resided with the applicant since 1987. *Id.* The applicant's husband stated that he and the applicant purchased a home in May 2000, and the monthly mortgage payment is $1400. *Id.*

The applicant's husband stated that his mother resides in Anaheim, California and he sees her every week. *Id.* He provided that his sister resides in Virginia and his bother resides in Nevada. *Id.*

He explained that the health of his children is good with the exception of his son discussed above. *Id.* He indicated that a doctor diagnosed his son with autism and recommended special education. *Id.* He provided that he will experience extreme hardship if the applicant is not permitted to return to the United States, as he and their children need her. *Id.* He stated that he cannot raise his children alone. *Id.* at 2.

The applicant provided medical documentation for his son that reflects that his son missed a neurological appointment on November 9, 2005. *Letter from Children's Hospital of Orange County*, dated November 9, 2005. The applicant provided a referral letter that shows that his son had an approved referral from his doctor "and/or" health plan to schedule an appointment with a Pediatric Surgeon. *Letter from Children's Surgical Associates*, dated November 11, 2005. The applicant submitted a document from his son's health insurance provider approving his son for possible hernia surgery. *Report from Choc Health Alliance*, dated October 31, 2005. The record contains a note from a physician indicating that the applicant's son is suspected for autism, and referring him to the school district for evaluation, therapy, and consideration for early special education programs. *Note from Choc Pediatric Subspecialty Faculty*, dated August 10, 2005. The record contains a document that shows that the applicant's son was scheduled for an appointment with an epilepsy center. *Medical Document*, dated November 9, 2005.

Upon review, the applicant has not shown that her husband will experience extreme hardship should she be prohibited from entering the United States. The record contains references to the applicant's son's health status and hardship he will face if the present waiver application is denied. Direct hardship to an applicant's child is not a basis for a waiver under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. When a parent's children face significant hardship, it is reasonable that such hardship creates emotional suffering for the parent.

In the present matter, the record clearly shows that the applicant's son requires medical care and specialized educational services. While the record does not contain clear evidence of a diagnosis of autism, it is evident that medical professionals observed concerns and recommended that the applicant's son undergo evaluation, therapy, and special educational services. The applicant has shown that her son required surgery for a hernia. The applicant provided sufficient evidence to show by a preponderance of the evidence that her son has medical insurance in the United States.

Thus, it is clear that the applicant's son would benefit from residence in the United States. Yet, the applicant has not established that her husband is unable to care for their children in the applicant's absence. The applicant's husband provided that his permanent resident mother resides in Anaheim, California, which is approximately six miles from his town of Garden Grove, California. The applicant's husband did not state whether his mother is available to assist him with childcare if needed. The applicant's husband indicated that he works, yet the applicant did not submit any documentation regarding her husband's employment or finances such that the AAO can determine if he is capable of funding outside childcare.

It is reasonable that the applicant's children would endure emotional hardship if they are separated from the applicant for a lengthy period, and that such hardship would impact the applicant's husband. Yet, such consequences are a common result of inadmissibility and the applicant has not shown that her children's suffering would elevate her husband's challenges to extreme hardship.

The applicant has not asserted or shown that her husband requires her assistance in order to meet his economic needs in the United States.

The applicant's husband expressed that he needs the applicant, indicating that he will endure emotional hardship if he continues to be separated from her. Yet, the applicant has not sufficiently distinguished her husband's emotional hardship fro that which is commonly expected when spouses are separated due to inadmissibility. U.S. court decisions have repeatedly 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.

Based on the foregoing, the applicant has not submitted sufficient evidence to show that her husband will experience extreme hardship should he remain in the United States without her.

The applicant has not shown that her husband would experience extreme hardship should he relocate to Mexico to maintain family unity. It is noted that the applicant has not asserted that her son with medical needs is unable to obtain proper care or educational services in Mexico. Nor has the applicant asserted or shown that her husband would be unable to engage in employment that is sufficient to meet his needs. The applicant has not addressed the financial requirements her family would have should they reside together in Mexico. Nor has the applicant stated whether she works in Mexico to help provide for her family. With the exception of the applicant's son's need of medical care that he may receive in the United States, the applicant has not identified any factors of hardship her family would experience should they reside abroad. In the absence of clear assertions

from the applicant, the AAO is unable to speculate regarding the challenges the applicant's husband would face in Mexico.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he relocate to Mexico to maintain family unity or should he remain in the United States. Thus, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to her husband. 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 for application for 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.