U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAY 0 4 2009
(CDJ 2004 741 486 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).

Ellen C. Johnson

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.

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 is experiencing hardship due to separation from the applicant. *Statement from the Applicant's Husband*, submitted July 18, 2006.

The record contains statements from the applicant's husband; a psychological evaluation of the applicant's husband; a letter from the applicant's church; a letter from the applicant's husband's employer; a letter from a psychologist regarding the applicant's mental health; documentation in connection with the applicant's application for an immigrant visa, and the refusal of her application; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's marriage certificate, and; a copy of the applicant's birth certificate. 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.

In the present matter, the record reflects that the applicant entered the United States without inspection in or about 1990, and she remained until she voluntarily departed in October 2005. Thus, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until October 2005, totaling over eight years. The applicant now seeks admission as an immigrant pursuant to a Form I-130 relative petition filed by her husband on her behalf. The district director deemed the applicant 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 states that he is experiencing hardship due to the applicant's absence. *Statement from the Applicant's Husband* at 1. He asserts that he is having health problems due to separation from the applicant. *Id.* He explained that he is suffering emotional consequences due to witnessing his children's difficulty. *Id.* The applicant's husband stated that his children question why the applicant is not in the United States with them. *Id.* He explained that his children are experiencing emotional hardship due to separation from the applicant. *Id.*

The applicant provided a letter from a licensed clinical social worker, [redacted] regarding her husband's mental health. [redacted] stated that she evaluated the applicant's husband on June 26, 2006, and that he is at high risk of developing major depression and experiencing delayed onset post-traumatic stress disorder if his stress level is not reduced immediately. *Statement from* [redacted] undated. She listed symptoms the applicant's husband reported, including poor sleep amount, poor diet, poor concentration, low level of energy, sadness and tearfulness, poor enjoyment of leisure activities, worry, feelings of loss and grief, and general anxiety. *Id.* at 1. She noted that the applicant's husband is having difficulty caring for his children, working, and completing essential chores and errands. *Id.*

The applicant's husband's employer observed that the applicant's husband has been experiencing sleep deprivation and distress, which is noticeable despite the fact that it is not significantly affecting his job performance. *Statement from Applicant's Husband's Employer*, dated June 27, 2006.

The applicant provided a copy of a letter from a psychologist, [redacted], in which [redacted] provided that the applicant "was attended in Psycology [sic] Care, presenting states of concern and anxiety, followed by constant depressive episodes, because of separation of her family . . . ." *Letter from* [redacted] dated June 27, 2006.

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is prohibited from entering the United States. The applicant's husband indicates that he is experiencing emotional hardship due to separation from the applicant. Yet, the applicant has not distinguished her husband's emotional hardship from that which is commonly experienced when spouses are separated due to inadmissibility.

The AAO has evaluated the statement from [redacted] regarding the applicant's husband's mental health. [redacted] indicated that she generated her report based on a single meeting with the applicant's husband, thus, the report does not represent an ongoing relationship with a mental health professional of treatment for a mental health disorder. While the AAO gives careful consideration to the opinion of a mental health professional, the report is not sufficient to show that the applicant's husband will experience unusual emotional consequences should the present waiver application be denied.

U.S. court 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.

The record contains references to hardship to the applicant's children as well as hardships to the applicant. Direct hardship to an applicant or an applicant's children is not a basis for a waiver under section 212(a)(9)(B)(v) 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. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation. The applicant has not provided sufficient explanation or documentation to show that hardship to her children is elevating her husband's hardship to extreme hardship. Nor has the applicant shown that she is suffering from hardship that is having an unusual impact on her husband's mental health.

The applicant's husband noted that he is having health problems. Yet, the applicant has not submitted medical evidence to show that her husband is encountering physical health consequences due to separation from 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 she be prohibited from entering the United States and he remain.

The applicant has not asserted or shown that her husband would experience extreme hardship should he relocate to Mexico to maintain family unity. Accordingly, the applicant has not established 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.