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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H4

JUN 2 6 2007

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date:
(CDJ 2002 706 291 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge, Ciudad Juarez, Mexico denied the waiver application and 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 in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant is married to a U.S. citizen and has a U.S. citizen child. She seeks a waiver of inadmissibility in order to reside in the United States with her family.

The officer-in-charge concluded that the applicant failed to establish extreme hardship to her U.S. citizen spouse through her continued inadmissibility. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated September 27, 2005.

On appeal, counsel states that the applicant's spouse will suffer extreme hardship if separated from his wife. Counsel also submits additional documentation. *Form I-290B*, dated October 20, 2005.

In the present application, the record indicates that the applicant entered the United States without inspection in July 2001. The applicant remained in the United States until March 2005. Therefore, the applicant accrued unlawful presence from when she entered the United States in July 2001 until March 2005, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of her March 2005 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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.

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 and/or parent of the applicant. Hardship the alien herself experiences or her child experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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 *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Mexico or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The AAO notes that the applicant is currently residing in Mexico with her daughter. The applicant's spouse states that he fears the applicant may become deaf because of lack of treatment for an inner ear sickness. *Spouse's Affidavit,* dated October 20, 2005. He states that, if treated in Mexico, his wife may become deaf. He explains that the applicant needs an operation and his medical insurance will not cover her operation in Mexico. He also explains that after the surgery the applicant will need a hearing aid and will have dizziness. *Id.* Counsel states that the prospect of having a deaf wife is an extreme hardship for the applicant's spouse. *Counsel's Brief,* dated October 25, 2005. The AAO notes, as stated above, that hardship to the applicant herself is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. The AAO recognizes that the worsening of the applicant's medical condition could cause the applicant's spouse extreme hardship. However, the record does not contain evidence to support the assertions of the applicant's spouse that his wife would not receive adequate treatment for her condition in Mexico. On the contrary, the record contains numerous documents showing that she is receiving extensive treatment for her condition in Mexico, including various medical reports from CARE medical offices in

Guadalajara, Mexico. The record shows that the applicant's wife is being seen at CARE's head and neck clinic, has received numerous diagnostic image tests, has taken part in a radiology study and is receiving care at another hospital as well. Nowhere in the documentation submitted does it indicate that she would not receive quality medical care in Mexico.

In addition to fears regarding the applicant's hearing, the applicant's spouse states that he is concerned for the impact this separation will have on his three-year-old daughter. He states that he does not want to separate his daughter from her mother, but he wants his daughter to be raised in the United States. *Spouse's Affidavit,* dated October 20, 2005. The applicant's spouse states that he cannot move to Mexico because he would lose his work and the properties that he owns, would have to stop his educational classes and would be separated from his two daughters from a previous relationship. He also states that if he relocated to Mexico he would be separated from his parents and the majority of his siblings who live in the United States. *Id.* The AAO notes that the applicant submitted no documentation to show that her spouse would be unable to find employment in Mexico or that a relocation would result in the loss of his real estate properties. There is also no documentation in the record establishing the applicant's spouse's relationship to his two daughters from a previous relationship. There is no indication how often he sees his daughters and if their relationship is close. The record also fails to demonstrate that he would not be able to visit family members upon relocation to Mexico.

The applicant's spouse states that separation from the applicant would be extreme hardship. He also states that he would suffer financially because he and the applicant are partners in a real estate business. He explains that if separated from his wife he would have to work longer hours to support his family in Mexico and would have to stop his educational classes. The AAO notes that the applicant's spouse submitted documentation showing that he and the applicant own various properties, however, he did not submit documentation showing that with his wife living in Mexico, he would not be able to continue to own these properties. In addition, the record does not contain any documentation concerning the family's finances or that establishes that the applicant would be unable to find employment in Mexico, thus lessening the financial burden on her spouse.

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.

The AAO recognizes that the applicant's spouse will endure hardship as a result of the applicant's inadmissibility. However, the record does not establish that the hardship he would face is different from that typically experienced by individuals separated as a result of removal.

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 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.