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

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APR 0 2 2010

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:

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).

Perry Rhew
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 reside in the United States 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 February 16, 2007.

On appeal, the applicant's husband explains that he is experiencing significant hardship due to the applicant's absence. *Statement from the Applicant's Husband*, dated February 12, 2007.

The record contains statements from the applicant's husband; copies of birth certificates for the applicant's children; medical documentation for the applicant and her husband; copies of health and dental insurance cards for the applicant's family members; a letter from the applicant's son's school in Mexico; a copy of the applicant's husband's mortgage statement; documentation of the applicant's husband's transfer of funds to her in Mexico; a budget for the applicant's husband, 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 October 1998. She remained until or about January 2006. Accordingly, the applicant accrued over seven 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, the applicant's husband explains that he is experiencing significant hardship due to the applicant's absence. *Statement from the Applicant's Husband* at 1. The applicant's husband states that he and the applicant have four U.S. citizen children who are residing with the applicant in Mexico. *Id.* He provides that, since they relocated to Mexico in January 2006, his children have developed respiratory and gastrointestinal problems, and they are suffering emotionally due to separation from him. *Id.* He adds that the applicant has been diagnosed with depression for which she takes medication. *Id.* He states that his wife's depression affects her ability to provide care for their children. *Id.* He notes that they decided that the children should reside in Mexico, as he works from 5:30pm to 2:30am and he is unable to provide sufficient care or hire someone else to do so. *Id.*

The applicant's husband states that he is particularly concerned for his son's adjustment to Mexico, as his son spoke no Spanish outside of their home, he never learned to read and write Spanish, and

thus he is behind the other children in his school. *Id.* The applicant's husband indicates that other children tease his son and perceive that he is different from them. *Id.*

The applicant's husband explains that he is a night foreman for a sand and gravel company, earning approximately $23.45 per hour with full medical benefits for himself and his family. *Id.* at 2. He states that he continues to pay for coverage for his family despite the fact that they reside in Mexico. *Id.*

The applicant's husband expresses that he is enduring emotional hardship due to separation from the applicant and their children. *Id.* He notes that he visits them every five to six months. *Id.* He states that he works hard to may his mortgage and to support his family in Mexico. *Id.* He states that he sends the applicant approximately $1,200 each month, but that he is having difficulty maintaining two households. *Id.* He notes that he visited a doctor who prescribed antidepressant medication for him. *Id.* He explains that he is diabetic, and that his depression worsens his condition. *Id.* He provides that he is experiencing depression "solely because of separation from [his] family." *Id.*

The applicant submits a letter from a physician in Mexico, [redacted] who states that the applicant's children "have presented frequent pictures of respiratory and gastrointestinal diseases," as well as "behavior alterations as a result of the obligatory separation of their parents and the rude change of their surrounding[s] . . . ." *Letter from* [redacted] dated January 16, 2007. [redacted] provides that the applicant's wife has exhibited symptoms of depression for which she takes antidepressant medication. *Id.* at 1.

The applicant submits a letter from his son's teacher in Mexico who provides that that applicant's son does not feel comfortable in his school, and he is always sad. *Letter from the Applicant's Son's Teacher*, dated January 18, 2007. She indicates that the applicant's son has difficulty due to the fact that Spanish is not his first language. *Id.* at 1.

The applicant submits a letter from her husband's physician, [redacted] who reports that the applicant's husband is being treated for depression and diabetes. *Letter from* [redacted], dated January 20, 2007. [redacted] states that the applicant's husband has experienced increased depression and increased difficulty controlling his blood sugar since the applicant relocated to Mexico. *Id.* at 1.

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 has not established that her husband will experience extreme hardship should he join her and their children in Mexico. The applicant's husband stated that he is enduring depression and emotional difficulty and he is receiving treatment for diabetes, yet the applicant has not shown that he has medical needs that cannot be addressed in Mexico. The applicant's husband expressed that his emotional hardship is due to separation from the applicant and his children, and he would not face such separation in Mexico.

The applicant's husband has employment in the United States, and it is understood that he would have to relinquish his position in order to relocate to Mexico. Yet, the loss of employment is a

common consequence when an individual relocates abroad due to the inadmissibility of a spouse. The applicant has not asserted or shown that her husband would be unable to find employment in Mexico that is sufficient to meet his and his family's needs.

The record contains references to hardships experienced by the applicant's children, particularly the applicant's son. Direct hardship to 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. The AAO has examined the letter from the applicant's son's teacher in Mexico. However, the letter does not show that the applicant's son is encountering unusual challenges not ordinarily experienced when children reside abroad due to the inadmissibility of a parent. Additionally, the letter from [redacted] is not adequately detailed to show that the applicant's children are suffering unusual health problems that cannot be treated in Mexico. The applicant has not established that her children are suffering consequences that will elevate her husband's challenges to an extreme level should he relocate to Mexico.

It is understood that the applicant's husband would face emotional challenges due to residing outside the United States for the duration of the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. However, 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.

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

The applicant also has not shown that her husband will suffer extreme hardship should he remain in the United States without her. The applicant's husband asserts that he is experiencing economic difficulty due to supporting his household in the United States and the applicant and their children in Mexico. The AAO has examined the documentation provided by the applicant, including evidence of her husband's mortgage, medication costs, and wire transfers to her in Mexico. However, while the applicant provides a budget for her husband, she does not submit documentation to support all of the expenses listed such as credit charges and utilities. Nor has the applicant provided documentation of her husband's income, such as tax, banking, or wage records. The applicant has not indicated her and the children's expenses in Mexico such that the AAO can determine her need for support from her husband. Thus, the AAO lacks adequate documentation to assess the

applicant's husband's financial circumstances, or to conclude that he is enduring economic challenges that rise to an extreme level.

The applicant's husband expresses that he is suffering emotional hardship due to separation from the applicant and his children. The AAO has carefully examined the letter from [redacted] Yet, [redacted] has not provided detail regarding the applicant's husband's psychological difficulty or indicated the impact his depression has on his ability to conduct ordinary life functions. A letter from the applicant's husband's employer shows that he performs well as a leader at work, with no mention of a negative impact on his performance due to his separation from the applicant. *Letter from the Applicant's Husband's Employer*, undated. While the AAO acknowledges that the separation of spouses and children often results in significant emotional hardship, the applicant has not sufficiently distinguished her husband's emotional challenges from those commonly experienced when family members reside apart due to inadmissibility.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will suffer extreme hardship should he remain in the United States or relocate to Mexico for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. 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.