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

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[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAR 24 2010

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 Acting District Director ("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.

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 Acting District Director,* dated August 19, 2008.

Counsel asserts that the applicant's husband will suffer extreme hardship if the present waiver application is denied. *Brief from Counsel*, at 2, dated September 17, 2008.

The record contains a brief from counsel; statements from the applicant's husband; a copy of the applicant's mother-in-law's naturalization certificate; a copy of the applicant's brother-in-law's birth certificate; copies of rent receipts for the applicant's husband; tax, income, and financial records for the applicant and her husband; documentation of communications charges for the applicant's husband; a letter from the applicant's husband's employer; documentation of the applicant's husband's transfer of funds to her in Mexico; documentation of the applicant's husband's automobile insurance; copies of medical documents for the applicant's daughter; a copy of the applicant's marriage certificate; copies of birth certificates for the applicant's daughters; documentation of an airline ticket for the applicant's husband to travel to Mexico; copies of medical documentation for the applicant's husband; reports on conditions in Mexico, and; documentation regarding the applicant's unlawful presence in the United States.

The applicant further provided documents in a foreign language. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. With the exception of the untranslated documents, the entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
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> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .

> (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.
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> . . . .
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> (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 June 2001. She remained until August 2007. 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 states that he and the applicant have two children, and that the applicant stayed at home to take care of them so that he could work full-time and overtime. *Statement from the Applicant's Husband*, dated September 13, 2008. He explains that he has been

continuously employed in quality control for a manufacturing company, and that he is the sole source of financial support for his family. *Id.* at 1. He states that he sends funds to the applicant in Mexico, and that he is exhausted from working additional hours to support his family. *Id.* at 2-3. He notes that he began taking care of his two daughters when the applicant went to Mexico, but that he sent them to Mexico to live with the applicant due to his long work hours and the lack of reliable childcare services. *Id.* at 2. The applicant's husband provides that he wishes to raise his children in the United States so that they can attend school here, learn English, and develop their social skills. *Id.* at 3. He notes that the applicant reported that his children are forgetting how to speak English. *Id.*

The applicant's husband states that he has only been able to visit his family every six months due to the cost and his inability to take time off work.[1] *Id.* He explains that he is responsible for additional health care costs for his children, as access to adequate medical care is almost impossible in Mexico. *Id.* He asserts that his children have acquired numerous infections and fevers due to poor living conditions and lack of sanitation in Mexico. *Id.* at 4. He states that he worries for his family's safety in Mexico due to violence and upheaval there. *Id.* at 5.

The applicant's husband states that he is experiencing significant emotional hardship due to separation from the applicant and his children. *Id.* at 4. He indicates that his stress is affecting his employment and ability to communicate. *Id.* He provides that a doctor prescribed sleeping pills for him. *Id.* He indicates that his employer informed him that he would be subject to disciplinary measures due to errors. *Id.* He states that his employer issued a "write up" on August 19, 2008 due to the fact that he had to travel to Mexico when his daughter was ill. *Id.*

The applicant states that his employer recommended that he begin psychological counseling to help him deal with his frustration and loneliness, but that he lacks funds to obtain such services. *Id.* at 5.

The applicant's husband states that he would have to live separately from his mother, father, and brother should he relocate to Mexico to join the applicant. *Supplemental Statement from the Applicant's Husband*, dated January 7, 2010. The applicant's husband indicates that he is close with his mother, who is 74 years old. *Id.* at 2. He provides that the applicant helped care for his U.S. citizen mother, including taking her to doctor's appointments and watching her while he was at work. *Id.* at 1. He states that his mother used to reside with him and the applicant, yet his mother moved into an apartment near his brother's home due to his demanding work schedule. *Id.* at 2. He reports that his youngest brother provides daily care for his mother, including ensuring she takes her medication for diabetes. *Id.* He notes that his parents are divorced, thus he must care for his mother. *Id.* The applicant's husband stated that he is also close with his father who is remarried and resides with his wife. *Id.* He asserts that he provides substantial financial support for his mother. *Id.* at 3. He contends that he would be unable to secure employment with adequate compensation in Mexico. *Id.*

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[1] The applicant's husband subsequently indicated that he is only able to visit the applicant and his daughters once per year. *Supplemental Statement from the Applicant's Husband* at 1.

The applicant's husband states that his parental relationship with his daughters has diminished due to their separation, and that this saddens him. *Id.*

Counsel asserts that the applicant's husband will suffer extreme hardship if the present waiver application is denied. *Brief from Counsel*, at 2, dated September 17, 2008. Counsel states that the applicant's children were born on December 25, 2002 and October 29, 2004. *Id.* at 1. Counsel contends that the applicant's husband has had to work 14-hour weekdays to earn sufficient funds to support himself and his family in Mexico. *Id.* at 3. Counsel states that the applicant's husband worries about his children in Mexico due to health concerns. *Id.* Counsel asserts that the applicant's husband spends considerable sums on phone bills to allow his family to communicate. *Id.* at 4.

The applicant provides a letter from a physician in Mexico, [redacted] who attested that he treated one of the applicant's daughters due to vomiting, a fever, and diarrhea. *Letter from* [redacted], dated August 13, 2008. [redacted] stated that the applicant's daughter responded to treatment at home and visits to his office, and she was to continue antibiotics and visits to his office until she showed no more signs of Gastroenteritis Bacterial or Infectional. *Id.* at 1.

The applicant provides documentation that her husband received a written reprimand from his employer due to his absence without notice due to his daughter's illness in Mexico. *Reprimand from the Applicant's Husband's Employer*, dated August 19, 2008.

The applicant submits medical records that show that her husband was treated for insomnia, including the prescription of medication. *Medical Records for the Applicant's Husband*, dated May 2008. The applicant's husband was unable to attend work for two days due to illness, and his doctor certified that he could return to work with no restrictions thereafter. *Kaiser Permanente Visit Verification Form for the Applicant's Husband*, dated May 19, 2008.

Upon review, the applicant has not shown that her husband will suffer extreme hardship should she be prohibited from entering the United States. The applicant has not shown that her husband will endure extreme hardship should he remain in the United States for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant's husband asserts that he is experiencing financial hardship due to supporting himself in the United States and the applicant and their two daughters in Mexico. The AAO has carefully examined the financial documentation the applicant submitted. A sample of the applicant's husband's weekly pay reports reflect that he earned approximately $870 net pay per week in 2009. Thus, at this weekly rate the applicant's husband earned approximately $45,000 net pay in 2009. The record shows that he consistently provided financial support to the applicant through wire transfers, totaling approximately $5,600 from January 25 to December 30, 2009. The applicant provided receipts to show that her husband pays $800 per month for rent, totaling $9,600 per year. However, the applicant has not provided sufficient explanation or documentation to show that her husband is unable to meet his remaining economic needs with approximately $30,000. Nor has the applicant established that her husband would require less than $5,600 to support her and their

children in the United States, such that their return would alleviate his economic burden in supporting his family.

The applicant's husband asserts that he assists his mother financially. However, the applicant has not provided any documentation to show her mother-in-law's economic needs or resources, or to show that her husband makes expenditures in support of his mother.

The AAO recognizes that families often incur additional expenses when residing apart, such as additional travel and communications costs. Yet, the applicant has not shown that her husband is facing unusual additional costs that are raising his economic challenges to an extreme level.

The applicant's husband provides that he is experiencing emotional hardship due to separation from the applicant and their two daughters. The AAO acknowledges that the applicant's husband is suffering psychological challenges, and that he faces concern for the applicant's and his daughter's health and well-being in Mexico. The record reflects that the applicant's husband has been treated for insomnia and his work has been affected due to his daughter's prior illness. However, the applicant has not sufficiently distinguished her husband's emotional challenges from those commonly experiencing when family members 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.

The record contains references to hardships experienced by the applicant's daughters. 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 recognizes that the applicant's daughters face emotional hardship due to being separated from the applicant's husband. The AAO has examined the medical documentation regarding the illness of one of the applicant's daughters in Mexico. Yet, the applicant has not established that her daughters are suffering consequences that can be distinguished from those ordinarily experienced by children who reside abroad due to the inadmissibility of a parent. The applicant has not shown that her daughters have suffered serious health problems, that they lack access to medical care, or that they are suffering emotional hardship that is elevating her husband's emotional challenges to an extreme level.

All elements of hardship to the applicant's husband, should he remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown that her husband will experience extreme hardship should she be prohibited from entering the United States and he remain.

The applicant has also not shown that her husband will suffer extreme hardship should he relocate to Mexico to join her and their daughters for the duration of her inadmissibility. As discussed above, the applicant has not shown that her husband is suffering medical problems beyond insomnia, or that he requires medical treatment that is unavailable in Mexico.

While the applicant has shown that her husband transfers funds to her and their daughters on a regular basis, she has not stated her expenses in Mexico or asserted that she has been unable to work. Thus, the applicant has not described her economic circumstances that might reveal those that her husband would face should he join her.

The applicant's husband has steady employment in the United States with favorable income. It is evident that he would endure emotional hardship should he relinquish his position and depart the United States. Yet, such situation is a common consequence when an individual relocates abroad due to the inadmissibility of a spouse. The AAO recognizes that many Mexican nationals choose to live and work in the United States due to available job opportunities with adequate compensation. Yet, the applicant has not provided sufficient explanation or evidence to show that her husband would face economic circumstances in Mexico that rise to an extreme level.

The applicant's husband expresses that he does not wish to be separated from his parents or brother in the United States. However, as noted above, the separation of an individual from family members or community is a common consequence when an individual relocates due to the inadmissibility of a spouse. The applicant has not shown that her husband would suffer unusual psychological effects should he reside apart from his parents and brother for the remainder of the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

It is noted that the applicant's mother-in-law moved into an apartment near the applicant's brother-in-law. The applicant's husband stated that his brother now provides necessary assistance to their mother. As stated above, the applicant has not provided evidence of her mother-in-law's economic needs. Nor has she provided any evidence that her mother-in-law requires regular assistance, such as medical documentation. Accordingly, the record does not establish that the applicant's mother-in-law would be left without needed assistance should the applicant's husband relocate to 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 join her in Mexico. Thus, 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 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.