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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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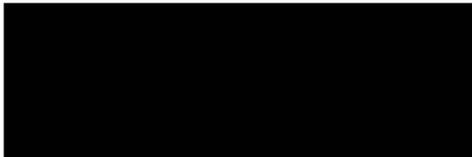
FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ)
(CDJ 2004 778 116 relates)

Date: **AUG 26 2009**

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



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, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 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. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with his wife and child in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated October 23, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED], indicating they were married on April 23, 2001; an affidavit from [REDACTED]; two letters from the couple's child's doctors; a copy of [REDACTED] naturalization certificate; copies of bills and other financial documents; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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 this case, the record indicates, and the applicant admits, that he entered the United States in December 1997 without inspection and remained until October 2005. The applicant accrued unlawful presence for over seven years. He now seeks admission within ten years of his 2005 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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. 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, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, [REDACTED] states that she would suffer extreme hardship if her husband's waiver application were denied because their son, [REDACTED] a six-year old U.S. citizen, has a cataract in his eye which needs to be surgically removed. [REDACTED] states that she works at the U.S. Postal Service and that her schedule varies daily. She claims her work schedule will not allow her to take care of her son when he is recovering from surgery because she does not have vacation time until next year and risks losing her job if she takes time off. In addition, [REDACTED] states that although she has family in Denver, they also work and would be unable to help her care for her son, and, therefore, the applicant is the only person who could help. [REDACTED] states that her son's health is at risk and that this hardship to her son would cause extreme hardship to her if she has to take care of her ill son on her own. *Affidavit from [REDACTED]*, dated November 21, 2006.¹

¹ The AAO notes that the record also contains a handwritten, undated letter from [REDACTED] however, this letter is not translated into English. The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. As this letter was not translated it cannot be considered in these proceedings.

A letter from a physician states that [REDACTED] "has a cataract in his right eye and will require cataract surgery. He will need several pre-operative visits, surgery, and several post-operative visits. He will also require on going care for visual rehabilitation." *Letter from [REDACTED]*, dated February 5, 2007; *see also Letter from [REDACTED]*, dated November 18, 2006 (referring that [REDACTED] be evaluated for cataract extraction by an ophthalmologist).

A letter from [REDACTED] employer, a Postmaster of the U.S. Postal Service, states that [REDACTED] is a "part-time flexible employee," who is not guaranteed any set number of work hours per week, but is averaging more than forty hours per week. [REDACTED] employer further states that "[s]he fills in for . . . 7 regular clerks which is a full-time job in itself." Her employer states that "[h]er possibility of continuing employment is excellent." *Letter from [REDACTED]*, dated November 28, 2006.

After a careful review of the record, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if her husband's waiver application were denied.

The AAO recognizes that [REDACTED] has endured and will continue to endure hardship as a result of the denial of her husband's waiver application and is sympathetic to the family's circumstances. However, there is insufficient record evidence to show that the level of hardship has risen to the level of extreme hardship. Although the record shows that the couple's son, [REDACTED] requires cataract surgery, the letter from [REDACTED] employer does not substantiate [REDACTED]'s claim that she is unable to take any time off to care for her son following his surgery.

Furthermore, [REDACTED] does not discuss the possibility of moving back to Mexico, where she was born, to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her. In addition, there is no allegation or evidence that [REDACTED] could not receive adequate treatment for his cataract in Mexico. Rather, their situation, if [REDACTED] decides to remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.