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Services

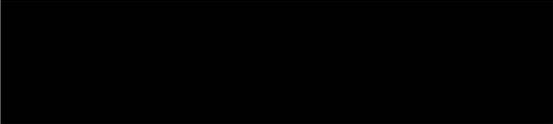
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FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date: **DEC 02 2009**

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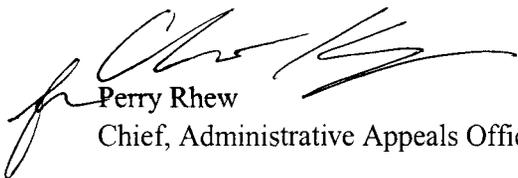
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:  


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 December 11, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband will experience extreme hardship if the applicant is prohibited from residing in the United States. *Statement from Counsel on Form I-290B*, dated December 14, 2006.

The record contains a statement from counsel on Form I-290B; statements from the applicant's husband; documentation of the applicant's husband's childcare expenses; documentation of the applicant's husband's transfer of funds to the applicant; documentation of the applicant's rent paid in Mexico; documentation of the applicant's son's medical services and related expenses; documentation of travel expenses between Mexico and the United States; a copy of the applicant's marriage certificate; a copy of the applicant's husband's naturalization certificate; a copy of a birth record for the applicant, and; information 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 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 June 1998. She remained until she voluntarily departed in December 2005. 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, counsel for the applicant asserts that the applicant's husband will experience extreme hardship if the applicant is prohibited from residing in the United States. *Statement from Counsel on Form I-290B* at 1. Counsel notes that the applicant's six-year-old son was in Mexico with the applicant, but that he returned to the United States because he was not doing well in school in Mexico. *Id.* Counsel provides that the applicant's son's return to the United States has caused additional hardship for the applicant's husband. *Id.* Counsel contends that the district director

erroneously applied the exceptional and unusual hardship standard that is relevant to cancellation of removal proceedings instead of the proper extreme hardship standard found in section 212(a)(9)(B)(v) of the Act. *Id.*

The applicant's husband states that the applicant has resided in Mexico since December 2006. *Statement from the Applicant's Husband*, dated February 23, 2007. He provides that he and the applicant have four children, ages 17, 12, 10, and six, all of who reside in the United States. *Id.* at 1. He states that his children cannot relocate to Mexico because they are in school. *Id.* He explains that he cares for his children, and that he spends approximately \$600 to \$800 on child care services each week. *Id.* He notes that he sends approximately \$800 to the applicant in Mexico each month, as she has no one to support her. *Id.* The applicant's husband states that he spends approximately \$200 per month in telephone calls so that his children can stay in regular contact with the applicant. *Id.* He explains that he makes approximately \$3,000 per month from his truck wash business in Houston, Texas, and that the job requires long hours. *Id.* He states that he has no other sources of income. *Id.* He asserts that he is enduring significant economic hardship due to trying to support his family, and that he is suffering extremely in the applicant's absence. *Id.*

The applicant provides documentation to show that her husband has incurred significant childcare expenses; and to show that he has transferred funds to her in Mexico. The applicant submits numerous documents relating to her son's medical care. The applicant provides documentation of travel between Texas and Mexico, purportedly as evidence that her or her husband's relatives have come to the United States to help care for her children.

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 shown that her husband will experience extreme hardship if he relocates to Mexico to join her. The applicant's husband suggested that he is enduring emotional hardship due to separation from the applicant, yet he would not encounter this challenge if they reside together abroad.

The applicant's husband asserts that they have four school-age children, and counsel noted that the youngest child did not do well in school in Mexico thus he returned to the United States. The AAO acknowledges that a child may experience hardship when relocating to another country with a new language, culture, and school system. It is understood that hardship to a child often creates emotional hardship for his or her parent. However, the applicant has not submitted clear explanation of her children's potential hardship in Mexico, such to show that their hardship would elevate the applicant's husband's challenges to extreme hardship.

The applicant provided copies of numerous documents alleged to relate to the medical care her youngest son receives in Mexico. However, as noted above, many of these documents are not translated and may not be considered in the present proceeding. The English-language documentation does not clearly state what current health conditions or medical needs her son has. Nor does it reflect that her son's health problems were related to his presence in Mexico, such to show that residing in Mexico poses risks to his health that he does not face in the United States. The applicant has not shown that her son has medical needs that cannot be met in Mexico. Accordingly,

the applicant has not shown that her son's health would create significant additional hardship for her husband should he reside in the United States.

The applicant's husband stated that he operates a truck washing business in the United States. It is evident that he would have to make changes in his business activities should he relocate to Mexico. Yet, the applicant has not provided any documentation relating to her husband's business. Thus, the AAO cannot assess his profit or income, or determine if he may hire individuals to operate his business in his absence should he relocate to Mexico. The applicant has not stated or shown that she is unable to work in Mexico to help support the family's needs. Accordingly, the record does not contain adequate documentation to show that the applicant's husband would face significant economic hardship in Mexico.

The applicant has not described other hardships to her husband should he relocate to Mexico. Based on the foregoing, the record does not show by a preponderance of the evidence that the applicant's husband would suffer extreme hardship should he join the applicant abroad.

The applicant also has not submitted sufficient evidence to show that her husband will experience extreme hardship should he remain in the United States without her. The AAO acknowledges that the separation of spouses often results in significant emotional challenges. However, the brief documentation provided by the applicant does not sufficiently distinguish her husband's hardship from that which is commonly experienced when family members are separated due to inadmissibility. 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 applicant's husband asserts that he is experiencing financial hardship due to supporting his children in the United States and the applicant in Mexico. The applicant provided documentation of her husband's childcare expenses, as well as the applicant's rent expenses in Mexico. The applicant's husband claims that he earns approximately \$3,000 per month. However, while the applicant has submitted clear documentation to show that her husband has substantial child care expenses, as noted above she has not provided any evidence of her husband's business income. The record lacks any banking records, tax filings, or income reports for the applicant's husband's business. In light of the fact that such documentation should be readily available, and the applicant has not asserted otherwise, the AAO finds that the applicant's husband's estimate of his income is not sufficient to support that he earns \$3,000 per month. As the AAO lacks adequate evidence to determine the applicant's husband's income, it cannot assess whether his current expenses pose a

burden to him. Thus, the applicant has not shown that her husband will experience financial hardship that rises to the level of extreme hardship should he remain in the United States.

The AAO acknowledges that acting as a single parent for four children poses significant challenges. Yet, the applicant has not described her husband's challenges as a single parent beyond economic concerns. In the absence of clear assertions from the applicant, the AAO may not speculate as to the hardships the applicant's husband would experience upon denial of the present waiver application. 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.

The applicant provided documents relating to travel between Mexico and the United States, purported to be evidence that relatives have come to provide childcare. However, the applicant has not provided any statements to support that the travel documents relate to childcare needs, such as statements from the alleged caregivers describing their contributions. Thus, the AAO lacks sufficient evidence to conclude that the travel documents in fact relate to the applicant's husband's childcare needs.

The applicant has not stated other elements of hardship to her husband. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he remain in the United States.

Counsel contends that the district director erroneously applied the exceptional and unusual hardship standard that is relevant to cancellation of removal proceedings instead of the proper extreme hardship standard found in section 212(a)(9)(B)(v) of the Act. The AAO agrees that *Matter of Tin*, I&N Dec. 371 (Reg. Comm. 1973), is not relevant to the present matter. The district director's reference to this case will be withdrawn. However, the district director cited the standard in section 212(a)(9)(B)(v) of the Act and relevant precedent. The AAO does not find that the applicant was prejudiced by an erroneous application of law.

Based on the foregoing, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to her husband, as required by 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.

As noted above, 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.