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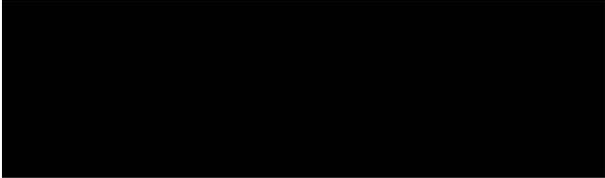
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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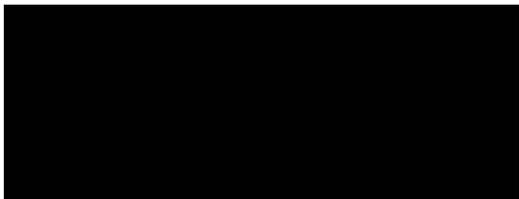
FILE:  Office: CIUDAD JUAREZ, MEXICO  
(CDJ 2004 690 228 relates)

Date: MAR 30 2009

IN RE: Applicant: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); and Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality 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 Officer in Charge (OIC), Ciudad Juarez, Mexico, and 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 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; and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by presenting false entry documents. The record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen husband and daughter.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated May 22, 2006.

On appeal, the applicant, through counsel, asserts that the OIC erred in denying the applicant's waiver application. *Form I-290B*, filed June 26, 2006.

The record includes, but is not limited to, counsel's brief; a statement and affidavit from the applicant's husband; and a summary of therapy sessions for the applicant's husband. The entire record was reviewed and considered in arriving at a 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 [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.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- . . . .
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

The AAO notes that the record contains several references to the hardship that the applicant's daughter would suffer if the applicant were denied admission into the United States. Sections 212(a)(6)(C) and 212(a)(9)(B)(i)(II) of the Act provide that waivers, under section 212(i) and section 212(a)(9)(B)(v) of the Act, are applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant entered the United States on August 18, 2001 by presenting false entry documents. On July 2, 2002, the applicant's United States citizen husband filed a Form I-130 on behalf of the applicant. On May 27, 2004, the applicant's Form I-130 was approved. In June 2005, the applicant departed the United States. On June 13, 2005, the applicant filed a Form I-601. On May 22, 2006, the OIC denied the Form I-601, finding the applicant accrued more than a year of unlawful presence, she misrepresented a material fact in order to gain entry into the United States, and she failed to demonstrate extreme hardship to her United States citizen spouse.

The AAO notes that counsel does not dispute that the applicant misrepresented herself in order to gain entry into the United States; therefore, the AAO finds that the applicant willfully misrepresented material facts in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

Additionally, the applicant accrued unlawful presence from August 19, 2001, the date the applicant entered the United States, until June 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her June 2005 departure from the United States. The applicant is, therefore, 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.

The applicant is seeking a section 212(i) and section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violations of sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act. Waivers under sections 212(i) and 212(a)(9)(B)(v) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon removal is irrelevant to sections 212(i) and 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen 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 (Board) 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.

Counsel claims that the applicant's husband is suffering extreme hardship by being separated from the applicant. *See appeal brief*, filed June 26, 2006. The applicant's husband states since the applicant left, he feels "depressed and sick." *Affidavit from* [REDACTED] dated June 21, 2006. Mr. [REDACTED] and [REDACTED] summarized that the applicant's husband feels lonely and sad because of his separation from the applicant; however, the AAO notes that other than this summary of three therapy sessions, there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any depression or anxiety, or whether any depression and anxiety is beyond that experienced by others in the same situation. *See summary of therapy sessions*, undated. Counsel states the applicant's husband has numerous family members residing in the United States, he has a good job as a professional truck driver, and he has health and retirement benefits through his job. *See appeal brief, supra*. Counsel claims that if the applicant's husband joins the applicant in Mexico, he will lose his job and home. *Id.* The AAO notes that the applicant's husband works as a truck driver, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Mexico. Additionally, the AAO notes that the applicant's husband is a native of Mexico, he speaks Spanish, and it has not been established that he has no family ties in Mexico. Furthermore, the AAO notes that counsel states the applicant's husband will join the applicant in Mexico if her waiver is

denied. *See appeal brief, supra*. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joins the applicant in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment and in close proximity to his family. The AAO notes that as a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, the AAO notes that beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

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 sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) 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.