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**NOV 19 2009**

FILE:

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

IN RE:

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.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated December 26, 2006.

On appeal, the applicant's father states that the applicant and her son are the only members of his immediate family residing in Mexico. *Statement from the Applicant's Father*, dated January 19, 2007. He requests that the waiver application be approved so that his entire family can be united. *Id.* at 1.

The record contains a statement from the applicant's father; copies of immigration documents for the applicant's family members; copies of money transfers from the applicant's family to the applicant in Mexico, and; information regarding the applicant's unlawful presence in the United States. The applicant provided a document in a foreign language without a translation into English. Because the applicant failed to submit a certified translation of the document, 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. Apart from the untranslated document, 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 September 2001. She remained until she voluntarily departed in September 2002. The district director concluded that the applicant remained in the United States without a legal immigration status for one year or more, and found the applicant inadmissible to the United States under section 212(a)(9)(B)(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 AAO notes that the range of time from September 2001 and September 2002 is not sufficiently specific to conclusively determine that the applicant accrued 365 days or more of unlawful presence in the United States. However, the district director clearly stated this range of time, and his finding that the applicant was unlawfully present for at least one year. Thus, the applicant was put on notice that U.S. Citizenship and Immigration Services found that she accrued at least one year of unlawful presence. As she does not contest this finding on appeal, the AAO determines that the applicant concedes the finding and her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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 father states that the applicant and her son are the only members of his immediate family residing in Mexico. *Statement from the Applicant's Father* at 1. He requests that the waiver application be approved so that his entire family can be united. *Id.*

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship should the present waiver application be denied. The applicant's U.S. citizen father suggested that he is experiencing emotional hardship due to the applicant's absence from the United States. However, the applicant has not provided sufficient explanation or evidence to distinguish her father's hardship from that which is commonly experienced when family members reside apart due to inadmissibility. The applicant has not asserted or shown that her father would encounter other elements of hardship should he remain in the United States without her.

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 has not asserted or shown that her father would experience hardship should he relocate to Mexico to maintain family unity.

Based on the foregoing, the applicant has not shown that her father will experience extreme hardship should she be prohibited from entering the United States at this time.

The applicant provided a copy of the permanent resident card of her mother, [REDACTED] but the applicant has not asserted or shown that her mother would experience hardship if the applicant remains outside the United States.

The AAO recognizes that the applicant's father wishes to have his family unified in the United States. However, the applicant has not shown that her father must remain in the United States and prolong their separation, or that his challenges, should he remain, rise to the level of extreme hardship. Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to a qualifying relative. 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 for an application for 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.