

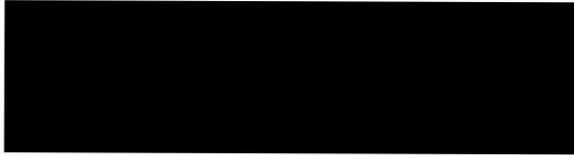
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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
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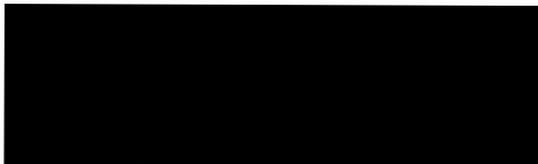
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FILE:  Office: MEXICO CITY (CIUDAD JUAREZ) Date:

IN RE:  SEP 01 2009

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).

John F. Grisson  
Acting 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 enter the United States and reside 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 District Director*, dated June 15, 2006.

On appeal, the applicant provides explanation and evidence to support that her husband will suffer extreme hardship should she be prohibited from entering the United States.

The record contains a statement from Catholic Legal Charities of Dallas; statements from the applicant's husband, son, brother-in-law, sister-in-law, and other relatives; a copy of a lease for the applicant and her husband; copies of photographs of the applicant and her family; copies of school records for the applicant's children; copies of bills, insurance records, and tax records; a copy of the applicant's marriage certificate; copies of the applicant's husband's car titles; copies of birth certificates for the applicant's children, and; information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering 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 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 March 2002. While the record indicates that she held employment authorization from June 26, 2003 to June 25, 2005, the applicant has not asserted or shown that she held a legal immigration status from her entry in March 2002 until June 26, 2003. Nor has she shown that she held a legal immigration status after June 25, 2005. Accordingly, the applicant accrued unlawful presence at least from March 2002 until June 26, 2003, totaling over one year. She remained until she voluntarily departed in September 2005. 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)(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 pursuant to section 212(i) of 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.

On appeal, the applicant provides a letter from [REDACTED], a representative of Catholic Legal Charities of Dallas, on her behalf. [REDACTED] states that the applicant's husband is experiencing discouragement and hopelessness due to separation from the applicant and his children. *Statement from [REDACTED]*, dated June 27, 2006. She stated that the applicant's husband's hardship has gone beyond matters of house and home. *Id.*

noted that the applicant's three children have missed a year of school in the United States. *Id.* at 1.                      asserts that it is difficult for the applicant's children to continue their studies in Mexico due to the applicant's family's economic situation. *Id.* She explained that the children would have access to financial aid and employment in the United States. *Id.*

The applicant's husband expressed that he has experienced great emotional suffering since he became separated from the applicant. *Statement from the Applicant's Husband*, dated July 11, 2006. He stated that he and the applicant have been married for 25 years and they have seven children. *Id.* at 1. He provided that he has a close family. *Id.* He indicated that his children in Mexico are missing out on their school activities. *Id.* He stated that he traveled to Mexico with one of his sons but that they both experienced emotional consequences when they had to leave. *Id.* The applicant's husband explained that he did not bring his younger children back to the United States with him because he could not work full-time while caring for them. *Id.* He provided that two of his daughters reside in the United States, but that they are going through a depressing time without the rest of their family. *Id.* at 2.

The applicant's husband previously explained that he was born in Mexico but that he has been a permanent resident of the United States since July 11, 1990. *Prior Statement from the Applicant's Husband*, undated. He explained that it would be difficult for him to return to Mexico because he does not have contacts for employment and his children are accustomed to live in the United States. *Id.* at 1.

The applicant's son stated that he is witnessing the applicant's husband experience significant emotional hardship due to the separation of their family. *Statement from the Applicant's Son*, dated July 11, 2006. He noted that the applicant's husband has lost weight and has instances of crying. *Id.* at 1. He explained that the applicant's husband and children who are in the United States are all working or in school, thus they are unable to care for the youngest child in the family who is a U.S. native. *Id.*

The applicant provided statements from relatives of her husband who attest that he is suffering emotional hardship due to their family's separation.

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is prohibited from entering the United States and he remains. The applicant provided explanation to show that her husband is experiencing emotional hardship due to being separated from her and their children who are currently in Mexico. The AAO acknowledges that family separation often creates significant emotional consequences. However, the applicant has not distinguished her husband's emotional suffering from that which is commonly experienced when families 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 has shown that her husband's psychological hardship has been elevated as a result of the hardship his children are facing due to the applicant's absence from the United States. 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. It is reasonable to expect that the children's emotional state due to separation from a parent or home country will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation. The AAO recognizes that the applicant's children face significant emotional hardship due to being separated from the applicant or the applicant's husband. Yet, the applicant has not established that they are suffering consequences that can be distinguished from those ordinarily experienced. The applicant has not shown that her children's emotional hardship is elevating her husband's challenges to extreme hardship.

It is noted that the applicant is inadmissible under section 212(a)(9)(B)(II) of the Act for a period of 10 years from her last departure. As the record does not indicate that she has entered the United States since September 2005, the applicant will no longer be inadmissible under section 212(a)(9)(B)(II) of the Act as of September 2015, in approximately six years. Thus, while the AAO acknowledges that six additional years is a substantial period, denial of the present waiver does not represent an indefinite bar to the applicant's admission to the United States. Should the applicant choose to reside with her family members in the United States at the conclusion of her inadmissibility under section 212(a)(9)(B)(II) of the Act, she may do so.

The applicant has not asserted or shown that her husband will endure economic hardship should he remain in the United States without her.

Based on the foregoing, the applicant has not shown that her husband will suffer extreme hardship if she resides outside the United States and he remains.

The applicant has not shown that her husband will experience extreme hardship if he returns to Mexico. As a native of Mexico it is evident that he would not be compelled to adapt to an unfamiliar language or culture. The applicant has not shown that her husband would be unable to secure employment in Mexico that is sufficient to meet his needs. Nor has the applicant stated whether she works in Mexico or whether she is able to find employment to help meet their family's needs. The applicant has not stated her family's prospective expenses should they reside in Mexico.

The applicant provided references to hardships her children will endure if the family resides in Mexico. As discussed above, the applicant has not shown that her children will face unusual

circumstances such that their challenges will raise her husband's hardship to extreme hardship should he relocate to Mexico.

The AAO acknowledges that the applicant's husband will endure hardship should he return to Mexico. However, he would not face separation from the applicant or his children there. As noted above, the applicant will no longer be inadmissible under section 212(a)(9)(B)(II) of the Act as of September 2015, in approximately six years. Thus, should the applicant's husband relocate to Mexico to maintain family unity, he may return with his family intact once the applicant is no longer inadmissible.

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.

The AAO recognizes that the applicant's husband is enduring significant emotional hardship due to separation from the applicant. However, the applicant has not shown that her husband must remain in the United States and prolong their separation, or that he will endure extreme hardship should he remain in the United States without her. 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 for application for 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.