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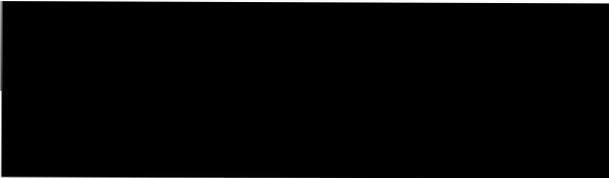
FILE:  Office: MEXICO CITY (CIUDAD JUAREZ) Date:
(CDJ 2001 536 196 relates)

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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:



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. 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 permanent resident husband.

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

On appeal, counsel for the applicant asserts that the applicant's husband will suffer extreme hardship should the applicant be prohibited from entering the United States. *Brief from Counsel*, dated July 26, 2006.

The record contains statements from counsel; a copy of the applicant's daughter's birth certificate; tax and employment documentation for the applicant's husband; copies of documents relating to the applicant's and her husband's purchase of a home; a copy of the applicant's birth certificate; a copy of the applicant's husband's permanent resident card, 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 1995. The applicant indicated that she received work authorization valid from October 16, 2002 until October 16, 2004 which suggests that she may have held a legal status during that period. She remained until she voluntarily departed on or about June 19, 2005. The applicant began accruing unlawful presence beginning on April 1, 1997, the date the unlawful presence provisions in the Act took effect. She has not asserted or shown that she held a legal immigration status from April 1, 1997 until October 16, 2002, or from October 16, 2004 until her departure on June 19, 2005. Accordingly, the record shows by a preponderance of the evidence that she accrued over one year of unlawful presence. 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, counsel asserts that the applicant's husband will suffer extreme hardship should the applicant be prohibited from entering the United States. *Brief from Counsel*, dated July 26, 2006. Counsel states that the applicant and her husband have three children, two who are married to U.S. citizens and one who is a native and citizen of the United States. *Id.* at 2. Counsel explains that the

applicant's husband and youngest daughter rely on the applicant, as she is a stay-at-home mother and provides childcare while the applicant's husband works. *Id.* Counsel contends that living separately would be disastrous both emotionally and financially for the applicant and her husband. *Id.* Counsel provides that the applicant's husband would be unable to earn sufficient income to obtain childcare services while supporting his family. *Id.* at 2-3. Counsel states that the applicant's husband and daughter would be unable to visit the applicant often due to financial limitations. *Id.* at 4.

Counsel states that the applicant's husband is a native of Mexico but that his only tie there is his elderly mother. *Id.* at 3. Counsel explains that the applicant's husband moved to the United States in 1984 and he has worked hard to become a permanent resident. *Id.* Counsel notes that the applicant's husband is improving his English in order to become a citizen. *Id.* Counsel provides that the applicant's husband works full-time as a Pipe Foreman and he owns his own home. *Id.*

Counsel states that the applicant's husband has suffered emotional distress due to the threat of separation and that he has scheduled an appointment with a counselor. *Id.* Counsel asserts that the applicant's husband will suffer emotional hardship should he be separated from the applicant, as he will miss her. *Id.* at 4. Counsel contends that the applicant's family has health insurance through the applicant's husband's employment, and that the applicant's husband may have to choose between the quality of his daughter's healthcare and education and the unity of his family. *Id.* at 3.

Counsel contends that economic conditions require 70% of the population of Mexico to reside in urban areas, and thus the applicant's husband would be unable to provide for his family there outside of a city. *Id.* Counsel asserts that the applicant's husband would be compelled to quit his stable job and sell his home to relocate to Mexico which constitutes hardship. *Id.* Counsel explains that the applicant's husband earns \$90,000 per year and he has worked with the same employer since 1993. *Id.*

Counsel contends that the applicant is a benefit to the United States. *Id.*

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 should he relocate to Mexico to maintain family unity. The applicant's husband is a native of Mexico and the record suggests that he is fluent in Spanish, thus he would not face the challenge of adapting to an unfamiliar language or culture should he return to Mexico. Nor would the applicant's husband endure separation from the applicant should he join her abroad.

The applicant provided documentation to support that her husband earns substantial income from his employment in the United States. Yet, 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 established that she is unable to work to help support the family. The applicant has not provided an account of her husband's estimated income or expenses should he return to Mexico. Nor has the applicant indicated whether her husband has financial resources such as savings that may be used to help meet his needs in Mexico. The AAO acknowledges that the applicant's husband wishes to continue his prosperous employment in the United States, and that relinquishing such employment

will cause emotional hardship. Yet, leaving steady employment is a common consequence when families relocate abroad due to inadmissibility. The applicant has not distinguished her husband's economic or emotional hardship, should he relocate to Mexico, from that which is ordinarily expected. 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 (9th Cir. 1991).

The AAO acknowledges that departing the United States after significant efforts to obtain permanent resident status involves emotional hardship for the applicant's husband. However, as the applicant will no longer be inadmissible under section 212(a)(9)(B)(i)(II) of the Act as of June 19, 2015, the applicant and her family may legally reside in the United States after approximately six years. Thus, denial of the present waiver application does not require the applicant's husband to make a permanent choice between residence in the United States while enduring family separation or residence abroad with family unity.

Counsel asserted that the applicant's family has health insurance through the applicant's husband's employment. Yet, the applicant has not provided evidence of this assertion, or shown that any of her family members have unusual medical needs that cause unusual expenses or cannot be addressed in Mexico.

It is noted that the applicant has not submitted a statement from her or her husband explaining hardships her husband would experience should he relocate to Mexico. The only statement discussing the applicant's husband's hardship consists of a brief from counsel. However, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he relocate to Mexico.

The applicant has not shown that her husband will experience extreme hardship should he reside in the United States without her. The applicant has not submitted sufficient evidence to show that her husband would experience economic hardship should he remain in the United States. She has not provided documentation to establish that she or her husband have unusual expenses that cannot be met with her husband's salary. Nor has she shown that she is unable to work in Mexico to help meet her needs. Counsel asserts that the applicant's husband would have difficulty funding childcare, yet the applicant has not shown that an approximately \$90,000 per year salary is insufficient to meet their household needs while obtaining childcare services to the extent required for a 12-year-old.

Counsel states that the applicant's husband will endure emotional hardship if he is separated from the applicant. The AAO acknowledges that the applicant's husband would suffer psychological hardship due to separation from the applicant. Yet, the applicant has not distinguished her husband's emotional hardship from that which is commonly experienced when spouses are separated due to inadmissibility. As noted above, 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 at

468. 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. *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.

All elements of hardship to the applicant’s husband have been considered in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband would experience extreme hardship should he remain in the United States. 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.