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

U.S. Citizenship and Immigration Services

H2

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
(CDJ 2004 803 049 relates)

JAN 08 2010

IN RE: [redacted]

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 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 January 17, 2007.

On appeal, the applicant's husband asserts that he will experience hardship if the applicant is not permitted to return to the United States. *Statement from the Applicant's Husband on Appeal*, dated February 14, 2007.

The record contains statements from the applicant's husband; medical documentation for the applicant's husband; a copy of the applicant's husband's naturalization certificate, and; information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering this decision.

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 August 1990. She remained until February 2006. Accordingly, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until February 2006, totaling over eight years. 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (Citations omitted).

The applicant's husband states that he and the applicant have been together for over seven years and that they share a close and loving relationship. *Statement from the Applicant's Husband on Appeal*, dated February 14, 2007; *Prior Statement from the Applicant's Husband*, undated. He explains that his family has been waiting for the applicant's immigration status to be resolved and that it has taken a tremendous toll on their lives. *Id.* at 1. The applicant's husband indicates that he is experiencing emotional and economic hardship. *Id.* The applicant's husband asserts that his and the applicant's grandchildren will suffer if they are separated from him or the applicant for a lengthy period. *Id.* at 2.

The applicant's husband indicates that he has medical conditions for which he needs the applicant's support and care, including diabetes mellitus type II, hyperlipidemia, and depression. *Id.*

The applicant's husband states that he and the applicant have a large portion of their families in the United States. *Id.* He notes that he and the applicant are close with their family members and that they would experience hardship if they are separated from them. *Id.* He states that having family near is important for raising his son. *Id.*

The applicant provided medical documentation for her husband, including a letter from his physician, . Dr. noted that the applicant's husband has been diagnosed with diabetes mellitus type II, hyperlipidemia, and depression. *Note from* , dated February 9, 2007. stated that the applicant's husband requires constant care, and that the applicant previously provided it. *Id.* at 1. stated that the applicant's husband would benefit from the applicant returning to the United States to care for him. *Id.* asserted that the applicant's husband's condition has deteriorated in the applicant's absence. *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 join her. The applicant's husband stated that he and the applicant have numerous family members in the United States with whom they are close. However, the applicant's husband did not indicate whether, as a native of Mexico, he has family members there. Thus, the applicant has not shown that her husband would lack regular contact with family should he reside in Mexico. It is further noted that the applicant has not identified what family members of her husband reside in the United States, thus the applicant has not shown by a preponderance of the evidence that her husband would in fact lose contact with family in the United States should he depart.

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, *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 prohibited from residing in the United States.

The record shows that the applicant's husband has been diagnosed with several health conditions, including diabetes mellitus type II, hyperlipidemia, and depression. However, the applicant has not asserted or shown that her husband would lack adequate treatment for these conditions in Mexico. The record suggests that the applicant's husband's depression is largely due to separation from the

applicant, and that he would benefit from her assistance. He would not face separation from her and he could receive her help should he join her in Mexico.

The applicant has not provided explanation of other hardship her husband would experience should he relocate to Mexico. Based on the foregoing, the applicant has not shown that her husband would experience extreme hardship should he join her outside the United States.

The applicant also has not shown that her husband will experience extreme hardship should he remain in the United States without her. The applicant's husband has clearly expressed that he is close with the applicant and that he does not wish to remain separated from her. However, the applicant has not sufficiently distinguished her husband's emotional hardship, should he remain in the United States, from that which is commonly experienced when spouses are separated due to inadmissibility.

The applicant presented evidence of her husband's medical conditions. However, while indicated that the applicant's husband requires constant care, he did not describe what procedures or assistance the applicant's husband needs to treat his conditions. The record does not show that his health impacts his ability to perform common tasks such that he cannot live independently. The applicant has not shown by a preponderance of the evidence that her husband will fail to receive needed assistance in her absence.

The applicant has not stated other elements of hardship to her husband should he remain in the United States without her. Based on the foregoing, the applicant has not established by a preponderance of the evidence that her husband will experience extreme hardship should he reside in the United States.

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. Nor has the applicant shown that her husband's hardship, should he remain in the United States, would 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 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.