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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  
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*Hr*

FILE: [REDACTED] Office: CIUDAD JUAREZ Date: **JAN 08 2010**  
(CDJ 1998 624 010 relates)

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 Officer-in-Charge, Ciudad Juarez. 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 lawful permanent resident husband.

The officer-in-charge found that the applicant failed to establish extreme hardship to her lawful permanent resident husband and denied the Form I-601 application for a waiver accordingly. *Decision of the Officer-in-Charge*, dated January 5, 2007.

On appeal, the applicant's husband asserts that he is experiencing hardship due to the applicant's absence from the United States. *Statement from the Applicant's Husband*, dated January 17, 2006.

The record contains a statement from the applicant's husband; a letter from the applicant's husband's counselor, and; information regarding the applicant's unlawful presence in the United States. The applicant also provided documents in a foreign language without translations into English. Because the applicant failed to submit certified translations of the documents, 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 documents, 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 May 1995. She was granted V-1 nonimmigrant status from February 12, 2002 to February 12, 2004. She remained until August 2005. Accordingly, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until February 12, 2002, and again from February 12, 2004 until her departure in 2005, totaling over four 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 is experiencing emotional hardship due to separation from the applicant and his children. *Statement from the Applicant's Husband*, dated January 17, 2006. He notes that he is seeing a counselor. *Id.* at 1. He explains that the applicant and their children used to reside with him in the United States and they had a good life, but now he is experiencing economic hardship in an effort to support the applicant and their children in Mexico. *Id.* He states that he visits

the applicant in Mexico approximately once every three months. *Id.* The applicant's husband provides that they lack money for childcare services in Mexico, and that the applicant does not work due to a scarcity of employment there. *Id.* He states that he would be unable to find a job in Mexico, and that he has a good job in the United States that he wishes to keep. *Id.* The applicant's husband explains that the applicant is residing with her mother in Mexico and that they are not getting along. *Id.* at 2. He notes that his three children are attending a private school in Mexico due to the fact that they do not speak Spanish and are U.S. citizens, but that they are running out of funds to continue. *Id.*

The applicant provided a letter from her husband's counselor, [REDACTED] Ms. [REDACTED] reports that the applicant's husband has been feeling anxious, depressed, and in need of direction. *Letter from* [REDACTED] dated January 16, 2007. [REDACTED] states that the applicant's husband's emotional difficulty began when the applicant stayed in Mexico after her interview to seek an immigrant visa. *Id.* [REDACTED] explains that the applicant's three children are having difficulty adjusting to life in Mexico due to the fact that they have limited Spanish language skills and they did not expect to remain there as long as they have. *Id.* at 2. [REDACTED] asserts that the applicant is unable to work due to childcare needs, and that the applicant cannot count on her mother to help due to her age. *Id.*

[REDACTED] explains that the applicant's husband does not wish to relocate to Mexico due to a lack of employment opportunities, and due to the fact that he has friends, employment, better healthcare, and better opportunities for himself and his children in the United States. *Id.*

[REDACTED] notes that the applicant is not doing well in Mexico. *Id.* at 3. She further states that the applicant's husband is sick and in need of support and medical attention. *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 also has not shown that her husband will experience extreme hardship should he relocate to Mexico to join her. The record reflects that the applicant's husband is suffering from emotional hardship and related symptoms due to separation from the applicant and their children. Yet, he would not face family separation should he join them in Mexico. The AAO acknowledges that the applicant's husband wishes to maintain contact with his friends and community in the United States. However, the applicant has not distinguished the emotional consequences her husband would experience due to relocating to Mexico from those commonly encountered when family members relocate due to inadmissibility.

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 prohibited from residing in the United States.

The applicant's husband contends that he and the applicant would be unable to find adequate employment should they reside in Mexico. However, the applicant has not provided evidence to support that they lack employment opportunities there, or to show what job skills she and her husband have. Nor has the applicant provided an account of her family's estimated economic needs should they reside in Mexico, such that the AAO can assess their requirements. The AAO acknowledges that the loss of the applicant's husband's job in the United States would create emotional hardship for him. Yet, the record lacks sufficient evidence or explanation to show by a preponderance of the evidence that the applicant's husband would face economic circumstances that rise to the level of extreme hardship.

noted that the applicant's husband is sick and that he needs medical attention. described symptoms the applicant's husband is experiencing due to separation from the applicant and their children. Yet, she did not identify any illness that the applicant's husband would have should he join his family in Mexico. Accordingly, the record does not reflect that the applicant's husband would have unusual medical needs that cannot be met in Mexico should he relocate there.

It is noted that the applicant's husband is a native of Mexico, and the applicant has not shown that he would face cultural or language challenges should he return there.

The record contains references to hardships experienced by the applicant's children. 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. The AAO acknowledges that relocating to a new country poses significant challenges for a child. However, the applicant has not provided sufficient explanation to show that her children are enduring unusual hardship, or that their hardship would elevate her husband's challenges to extreme hardship 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 in Mexico.

The applicant 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 their children and that he does not wish to remain separated from them. 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 family members are separated due to inadmissibility.

The AAO has carefully examined the letter from . It is noted that did not indicate that the applicant's husband is receiving ongoing counseling or medical care. While it is

understood that the applicant's husband is suffering from substantial emotional hardship, [REDACTED] letter does not sufficiently distinguish his circumstances from those expected when families are separated due to inadmissibility.

As noted above, the applicant has not provided ample evidence to show that she is unable to engage in employment in Mexico to help meet their family's needs. While the applicant's husband indicated that they are encountering economic challenges, the applicant has not provided any evidence to support this assertion such as banking records, documentation of the cost of their children's attendance in a private school in Mexico, or documentation of the applicant's husband's income or expenses in the United States. Without sufficient evidence, the AAO is unable to conclude that the applicant's family is facing unusual financial challenges.

It is further noted that the applicant has not indicated whether her children may reside in the United States with her husband. It is understood that acting as a single parent for three children is often difficult, yet without clear explanation from the applicant, the AAO is unable to determine the impact on her husband should his children return to the United States.

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 without her.

The AAO recognizes that the applicant's husband is enduring significant emotional hardship due to separation from the applicant and his children. 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, as required for a waiver under 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.