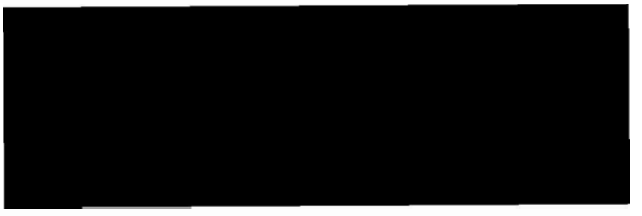
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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: Office: MEXICO CITY (CIUDAD JUAREZ) Date: JAN 0 8 2010
(CDJ 2004 809 253 relates)

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 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 22, 2007.

On appeal, the applicant's husband asserts that he will experience extreme hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant's Husband*, dated February 16, 2007.

The record contains statements from the applicant's husband and sister-in-law; letters regarding the applicant's husband's employment; a letter from the applicant's husband's physician; documentation of the applicant's husband's prescription medications; a half-day disability certificate for the applicant's husband from a medical center; and; information regarding the applicant's unlawful presence in the United States. The applicant further provided documents in a foreign language. 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. With the exception of 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 December 2001. She remained until January 2006. Accordingly, the applicant accrued over four years of unlawful presence in the United States. 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.

On appeal, the applicant's husband asserts that he will experience extreme hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant's Husband* at 1. The applicant's husband states that he is separated from the applicant and his children and that he is unable to do anything to stop the pain they are experiencing. *Id.* He explains that he speaks to his family daily, and that he experiences emotional hardship when his three-year-old son asks him to bring his family back to the United States. *Id.* He indicates that his health is worsening, he is smoking more, and he has lost 25 pounds since becoming separated from the applicant and his children. *Id.*

The applicant's husband states that he cannot concentrate due to his depression which is affecting his job performance. *Id.* He indicates that he has made mistakes in his construction job that have put the lives of his co-workers in danger. *Id.*

The applicant's husband asserts that he is unable to pay all of his bills because he does not earn sufficient income. *Id.* He notes that he must support the applicant and his children in Mexico, he must pay child support for his daughter in the United States, and he must pay for his own expenses. *Id.* He indicates that he needs the applicant and his children with him in the United States for his health and so that he can realize his goal of buying a home. *Id.*

The applicant provided a letter from her husband's employer indicating that the owner issued a correction letter to him, despite the fact that the applicant's husband has been a good employee for many years. *Letter from* dated February 16, 2007.

The applicant submitted a letter from a medical professional, who notes that the applicant's husband sought help for depression and sleep loss due to separation from the applicant and his son. *Letter from* dated February 13, 2007. stated that he prescribed medications for the applicant's husband, but that they are not a substitute for the applicant's presence in the United States. *Id.* at 1. The record shows that the applicant's husband was prescribed medications including Prozac, Lunesta and Xanax, and he was issued a certificate to release him from work for one-half day.

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 asserted or shown that her husband will experience extreme hardship should he relocate to Mexico to maintain family unity. The applicant's husband has steady employment in the United States, yet the applicant has not provided documentation of her husband's income or expenses, or explained his potential for employment in Mexico. Thus, the applicant has not established that her husband's loss of his employment in the United States would constitute extreme hardship. It is noted that the loss of employment is a common consequence of relocation abroad to join a spouse due to inadmissibility. U.S. court decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See e.g. Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991).

The applicant has not provided explanation or evidence to show that her husband would endure other elements of hardship should he relocate abroad. It is noted that the applicant's husband would not endure separation from the applicant or his son should he join them in Mexico, which was cited by as the source of the applicant's husband's psychological symptoms.

In the absence of clear assertions from the applicant, the AAO may not speculate as to hardships the applicant's husband may face. In proceedings regarding 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. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will encounter extreme hardship should he relocate to Mexico to maintain family unity.

The applicant's husband asserts that he will experience extreme hardship if he remains separated from the applicant and his son. While he stated that he is experiencing economic hardship, as noted above the applicant has not submitted any financial documentation to show her husband's income or expenses. Nor has the applicant asserted or shown that she is unable to work in Mexico in order to help meet her needs. Thus, the AAO lacks adequate explanation or documentation to conclude that the applicant's husband is enduring significant economic hardship.

The record contains references to hardships experienced by the applicant's son. Direct hardship to an applicant's child 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 applicant's husband suggested that his son is experiencing hardship due to residing in Mexico, and that he wishes to return to the United States. Yet, the applicant has not provided sufficient explanation to show that her son is encountering unusual consequences, or that her son's hardship is elevating her husband's challenges to extreme hardship.

The record supports that the applicant's husband is suffering significant emotional hardship due to separation from the applicant and his son. He has been under the care of a medical professional and he has been prescribed four medications. The applicant has provided documentation to show that her husband's work performance has suffered due to his emotional distress. The AAO acknowledges that the applicant's husband is enduring difficult emotional consequences due to separation from the applicant. However, in order to establish eligibility for consideration for a waiver under section 212(a)(9)(B)(v) of the Act, the applicant must show 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. As discussed above, the applicant has not shown that her husband would face extreme hardship should he join her and their son in Mexico. Thus, the applicant has not shown that her husband must endure the emotional effects of family separation.

All presented elements of hardship to the applicant's husband have been considered in aggregate. Based on the foregoing, despite the applicant's husband's present emotional hardship, the applicant has not shown that her husband must remain in the United States such that denial of the present waiver application "would result in extreme hardship" to him. 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 regarding 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.*