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

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date: JAN 08 2010

(CDJ 2005 607 035 relates)

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[redacted]

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).

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Fiancé(e) (Form I-129F). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her United States citizen husband and daughter.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated August 24, 2006.

On appeal, the applicant, through counsel, asserts that "[i]t was wrong to deny the [waiver] in this case. If [the applicant] is prevented from returning to the United States, it will devastate her U.S. citizen husband." *Form I-290B*, dated September 26, 2006.

The record includes, but is not limited to, counsel's brief, letters from the applicant's husband, and a psychological evaluation and letter regarding the applicant's husband psychological condition. The entire record was reviewed and considered in arriving at 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 [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 AAO notes that the record contains several references to the hardship that the applicant's daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant initially entered the United States in February 2001 without inspection. On October 3, 2003, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. In May 2004, the applicant departed the United States. On July 26, 2004, the applicant's husband filed a Form I-129F on behalf of the applicant. On April 6, 2005, the applicant's Form I-129F was approved. On August 2, 2005, the applicant filed a Form I-601. On August 24, 2006, the OIC denied the Form I-601, finding the applicant accrued more than a year of unlawful presence and she failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from February 2001, the date the applicant entered the United States without inspection, until May 2004, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her May 2004 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel claims that the applicant's husband "is and will experience extreme hardship as a result of the separation from [the applicant] and his daughter." *Appeal Brief*, dated October 19, 2006. Counsel states the applicant's husband is experiencing "serious psychological depression as a result of the separation from [the applicant] and daughter." *Id.* In a letter dated October 6, 2006, the applicant's husband states that since he has been separated from his family, he is suffering from depression and has had to seek psychological therapy. In a letter dated October 6, 2006, [redacted] states that the applicant's husband is experiencing challenges through the separation of his family, and this separation could result in the destruction of his family. In an evaluation dated October 16, 2006, [redacted] diagnosed the applicant's husband with major depressive and anxiety disorder. [redacted] states the applicant's husband is suffering from major depression as a result of the separation from the applicant and his daughter. The AAO notes, therefore, that since the applicant's husband's anxiety and depression are primarily caused by the separation from the applicant, if the applicant's husband joins the applicant in Mexico then the anxiety and depression would presumably no longer be an issue. Counsel states the applicant's daughter will suffer hardship if she remains in Mexico with the applicant.

Counsel claims that if the applicant's daughter remains in Mexico with the applicant, she "would be forced to attend school in Mexico.... The quality of education in Mexico is not the same quality as that received in the United States." *Appeal Brief, supra.* The applicant's husband states his daughter has suffered emotional distress which is causing behavioral problems in school. The AAO notes that other than this statement from the applicant's husband, there is no evidence in the record that the applicant's daughter is experiencing any hardship while living in Mexico; and furthermore, the applicant's daughter is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act.

Counsel states that it would be impossible for the applicant's husband to "relocate to Mexico because of the lack of jobs and the high unemployment rate in the country." *Id.* However, the AAO notes that in the applicant's husband's letter, he states that if the applicant's waiver is denied, he will be forced to migrate to Mexico. Additionally, the AAO notes that at the time of the applicant's appeal, the applicant's husband had completed more than three-quarters of his electrical engineering degree, and it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Mexico. Furthermore, the AAO notes that the applicant's husband is a native of Mexico and it has not been established that he has no family ties in Mexico. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined her in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment and continuing his education. The AAO notes that as a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states the applicant's husband cannot care for his daughter because even though he works 40 hours per week, he does not generate enough income to put his daughter in childcare. *See appeal brief, supra.* The AAO notes that the applicant has not established that her husband is unable to provide or obtain adequate care for their daughter in her absence or that this particular hardship is atypical of individuals separated as a consequence of removal or inadmissibility. Counsel states the applicant's husband is the sole wage-earner in the family. *Id.* The

AAO notes that beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States.

United States court decisions have repeatedly 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). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan*, *supra,* the Ninth Circuit Court of Appeals 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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.