

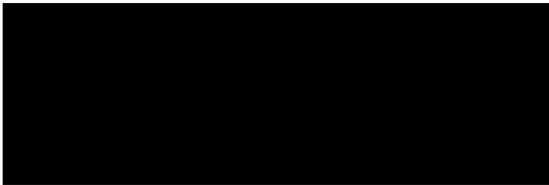
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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
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FILE: [REDACTED] Office: CIUDAD JUAREZ, MEXICO  
CDJ 2004 555 057

Date: **JAN 13 2010**

IN RE: [REDACTED]

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

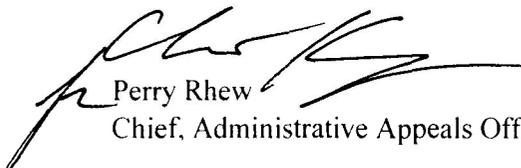
ON BEHALF OF APPLICANT:

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, 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 34-year-old 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 section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has sought to procure admission to the United States through fraud or misrepresentation. The applicant is married to a citizen of the United States, and she seeks waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i), in order to reside with her husband and children in the United States.

The Officer in Charge found that the applicant failed to establish extreme hardship to her spouse, and denied the application accordingly. *Decision of the Officer in Charge*, dated Nov. 14, 2006. On appeal, the applicant's spouse requests approval of the waiver in order to achieve family unity. *See Form I-290B, Notice of Appeal*, dated Dec. 8, 2006.

The record contains, among other things, a copy of the couple's marriage certificate, indicating that they married in Mexico on January 23, 1996, and a letter from the applicant's husband. The entire record was reviewed and considered in rendering this decision on appeal.

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 [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.

Section 212(a)(6)(C)(i) of the Act provides:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

The record indicates that on April 21, 1996, the applicant made an application for entry into the United States by presenting an altered Mexican passport of another individual with a nonimmigrant visa. *See Form I-213, Record of Deportable Alien*, dated Apr. 21, 1996. The applicant was detained for an exclusion proceeding, *id.*, and she was ordered excluded and deported from the United States on April 24, 1996, *Order of the Immigration Judge; Form I-296, Notice to Alien Ordered Excluded by Immigration Judge*. Following her deportation, in or around April, 1996, the applicant entered the United States without being inspected and admitted. *See Form I-601, Application for Waiver of Grounds of Inadmissibility*. The applicant's spouse filed a Petition for Alien Relative (Form I-130), which U.S. Citizenship and Immigration Services approved on March 14, 1997. *See Form I-130, Petition for Alien Relative*. The applicant departed the United States in December, 2001. *See Form I-601, supra*.

The applicant's unlawful presence for one year or more after April 1, 1997, and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006). The applicant's use of the passport of another person in an attempt to gain admission into the United States renders her inadmissible under section 212(a)(6)(C)(i) of the Act. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 447-49 (BIA 1960; A.G. 1961) (stating that a misrepresentation is material if the alien is ineligible on the true facts, or if the misrepresentation shut off a line of inquiry which may have resulted in ineligibility).

In order to obtain a hardship waiver under sections 212(a)(9)(B)(v) or 212(i) of the Act, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i). Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation). Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *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 BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court affirmed that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse, [REDACTED] is a 45-year-old native of Mexico and citizen of the United States. *See Certificate of Naturalization for [REDACTED]*. The applicant and her husband have been married for almost 14 years. *See Marriage Certificate*. The couple has two U.S. citizen sons, who are now 12 and 10 years old. *Id.* It appears that the couple’s sons live with the applicant in Mexico. *See Letter from [REDACTED] dated Dec. 2, 2005.*

In support of the appeal, the applicant's husband states that he is a U.S. citizen, and that he "want[s] his] children to be raised at [his] side in . . . unity" with his wife. *See Notice of Appeal.* [REDACTED] asserts that his children "need to have [their] family together as one," *id.*, and that they should be attending school in the United States, *see Letter from [REDACTED] supra.* The record indicates that [REDACTED] has been employed as a mechanic, and the applicant was a full time homemaker. *See Forms G-325, Biographic Information.* However, the record does not contain any information regarding the family's income and expenses.

Here, the record contains insufficient evidence to show that the denial of the waiver has caused extreme hardship to the applicant's husband. For example, the applicant did not provide probative testimony, medical records, or other evidence to show that any psychological hardships faced by [REDACTED] are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Additionally, without evidence of the applicant's income and expenses, the AAO cannot conclude that family separation has caused extreme financial hardship to [REDACTED]. Further, any hardships faced by the applicant's children as a result of family separation are not calculated in the extreme hardship analysis, except to the extent that these hardships impact [REDACTED]. Finally, the applicant's husband has not presented any evidence, such as detailed testimony or documentation regarding conditions in Mexico, to support a claim that relocation to Mexico would cause extreme hardship. *See Matter of Cervantes-Gonzalez, 22 I&N Dec. at 565-66* (setting forth relevant factors, including the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate).

In sum, although the applicant's spouse claims hardships based on the denial of the waiver, the record does not support a finding that the difficulties, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez, 96 F.3d at 392; Matter of Pilch, 21 I&N Dec. at 631.* Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.