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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

H2

[redacted]

JAN 1 5 2010

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
(CDJ 2004 796 142 relates)

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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).

for 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 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 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. The applicant is married to a U.S. citizen and 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 with her husband and child in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated January 17, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, , indicating they were married on May 1, 2004; a copy of the birth certificate of the couple's U.S. citizen child; two letters from , letters of support, including from parents and sister, and the applicant's sister; a letter from the couple's child's physician; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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 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.

In this case, the district director found, and the applicant does not contest, that she entered the United States in October 2001 without inspection and remained until February 2006. The applicant accrued unlawful presence for over four years. She now seeks admission within ten years of her 2006 departure. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship under the Act. 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.

In this case, the applicant's husband, [redacted] states that during his elementary school years, he was "always behind in [his] studies and [he] was finally classified as a 'special student' and sen[t] to Special Ed." [redacted] contends he never learned to read or write above the third grade level, has difficulty expressing his feelings and his needs, and has been assisted by his parents throughout his life. [redacted] describes himself as "a laborer by trade" and works at Subway Corporation. [redacted] claims he would suffer financially if his wife's waiver application were denied because he would have to support himself in California as well as support his wife in Mexico. He contends he and his wife "have the normal expenses, [they] pay rent[, have] two car bills, the usual children expenses." In addition, [redacted] states that his daughter has lived with his wife in Mexico since she departed the United States and contends he "never thought that [their] child's health would be affected to such a degree where [his] wife now fears for [their] child's life." [redacted] claims his special needs, lack of a formal education, and meager wages makes it impossible for him to save money to visit his wife and child in Mexico. *Declaration of* [redacted] dated February 13, 2007; *Letter from* [redacted], dated February 10, 2006.

A letter from the couple's child's physician in Mexico states that the couple's two-year old daughter "has been under treatment since one year ago, 6 months ago she was treated for faringoamigdalitis; 2 months ago with typhoid fever, and one month ago with an infectious gastroenteritis with signs and symptoms of dehydration; She is treated but shows poor signs of improvement and currently is suffering from grade II malnutrition, reason for which she can no longer remain in Mexico in view of her susceptibility to gastrointestinal and respiratory infections." *Letter from* dated February 11, 2007.

A letter from mother states that the applicant was a great addition to the family and was always there for her for any favors that she needed. mother states she is diabetic and that the applicant helped her with her insulin and special diet. She also states she misses her daughter-in-law and her granddaughter and that she wishes she could see her granddaughter grow up in the United States. *Letter from* dated January 25, 2007; *see also Letter from* dated January 25, 2007 (describing the applicant as great help around the house and a very caring and sincere person); *Letter from* dated January 25, 2007 (stating the applicant took care of her needs after she was in an accident that disabled her and is a great wife and mother).

After a careful review of the evidence, there is insufficient evidence to show that has suffered or will suffer extreme hardship if his wife's waiver application were denied.

The AAO recognizes that has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, does not discuss the possibility of moving to Mexico to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. If decides to stay in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The BIA and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (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).

With respect to the couple's daughter's health problems, although the input of any health professional is respected and valuable, the letter from her physician does not sufficiently address the prognosis, treatment, or severity of her health conditions. For instance, although her physician states she was treated for faringoamigdalitis, the letter does not describe in plain language the symptoms she experienced, the treatment she received, or whether she requires on-going medical attention. Similarly, the letter states the child is susceptible to gastrointestinal and respiratory infections; however, the letter states that she was treated once for an infectious gastroenteritis one month ago and makes no mention

whatsoever of any respiratory infections. In any event, even assuming the couple's daughter is experiencing health conditions to the extent that she can no longer live in Mexico, has not addressed why his U.S. citizen daughter cannot live with him in the United States, particularly considering that copies of driver's licenses in the record indicate that both of parents and his sister live with him, and the applicant's sister lives next door. There is no suggestion family and sister-in-law would be unable or unwilling to assist him in caring for his daughter. declaration states only that he and his wife decided their daughter would live with the applicant before they knew their daughter would have health problems. However, he does not explain why his daughter cannot move back to the United States given her current health issues.

Regarding purported special needs, there is no evidence in the record to substantiate this claim. Significantly, even though both of parents submitted letters for the record, neither of them mention his special needs or contend that they help him in any way, as claims. *Declaration of supra.* There is no documentation from any health professional, counselor, teacher, or employer discussing limitations. In addition, there is no allegation that requires the assistance of his wife. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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)(v) 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.