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U.S. Department of Homeland Security  
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Administrative Appeals Office MS 2090  
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**JAN 15 2010**

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date:  
(CDJ 2004 843 387 relates)

IN RE: [REDACTED]

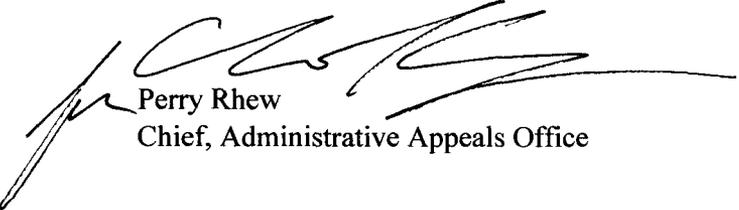
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

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 his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and children.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated February 9, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife will experience extreme hardship if the present waiver application is denied. *Statement from Counsel*, dated April 4, 2007.

The record contains a statement from counsel; statements from the applicant's wife and mother-in-law; copies of birth records for the applicant's wife and children; a copy of the applicant's marriage certificate; a psychological evaluation of the applicant's wife, and; documentation regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the 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 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 June 1999. He remained until April 19, 2004. Accordingly, the applicant accrued over four years of unlawful presence in the United States. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He 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 his last departure. The applicant does not contest his 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, counsel for the applicant asserts that the applicant's wife will experience extreme hardship if the present waiver application is denied. *Statement from Counsel*, dated April 4, 2007. Counsel contends that the submitted psychological evaluation establishes that the applicant's wife's psychological health is fragile, and that she would experience greater emotional hardship than ordinarily expected. *Id.* at 1.

The applicant's wife stated that the applicant's absence is affecting her spiritually, emotionally, and physically. *Statement from the Applicant's Wife*, dated March 1, 2006. She expressed that she is close with the applicant and that she misses his presence and support. *Id.* at 1. She indicated that, without the applicant, she is confused and unstable. *Id.* She explained that the applicant is the "breadwinner" of their family and that it would be difficult for her to work part-time due to the need to care for her two children. *Id.*

The applicant's wife stated that she and her children would experience hardship if they relocate to Mexico. *Id.* She indicated that she lacks sufficient education to obtain adequate employment in Mexico. *Id.* She noted that she would have to work in a low-paying job that would not earn sufficient income to meet their needs and pay the bills they have accumulated while residing in the United States. *Id.* She stated that she and her children would lose educational opportunities should they reside in Mexico. *Id.*

The applicant's wife previously stated that the applicant can give a better life to her kids. *Prior Statement from the Applicant's Wife*, dated February 23, 2006. She indicated that it was hard for her to work and support her kids, and that she wishes to spend more time with them and the applicant. *Id.* at 1.

The applicant's mother-in-law stated that the applicant is a good husband and father, and that she wishes for him to return to the United States. *Statement from the Applicant's Mother-in-law*, dated April 3, 2007. She noted that the applicant's wife has had a difficult time without the applicant. *Id.* at 1.

The applicant provided a psychological evaluation of his wife, conducted by [REDACTED] a licensed psychologist. [REDACTED] described facts about the applicant's wife's family history as recounted by the applicant's wife on February 26, 2007. *Psychological Evaluation*, dated April 5, 2007. [REDACTED] noted that the applicant's wife indicated that her two children were ill during a visit to Mexico. *Id.* at 2. [REDACTED] stated that the applicant's wife reported that the applicant lives in a small village in Mexico and works with his father and brother building cinderblock houses, and that his three uncles and grandparents live nearby in a family enclave. *Id.* at 3. [REDACTED] indicated that the applicant's wife described crowded conditions when she visited the applicant in Mexico. *Id.*

[REDACTED] stated that the applicant's wife presently lives with her children, mother, father, and brother in the United States. *Id.* He provided that the applicant's wife is experiencing significant emotional hardship and related symptoms due to the applicant's absence, and that she sometimes requests her parents to provide childcare for her children due to her inability to cope. *Id.* at 4. [REDACTED] explained that the applicant's wife reported symptoms including sleep loss, shortness of breath, hopelessness, irritation, and guilt. *Id.* at 4-5.

[REDACTED] concluded that the applicant's wife's parents "provide a critical resource for her to help maintain her family stability and care for her children." *Id.* at 7. He noted that the applicant's wife "has a precarious hold on her mental health due to clinical depression which is likely related to [the applicant's] legal situation." *Id.* He stated that the applicant's wife has not sought help for depression, and that her depression appears to be worsening. *Id.*

[REDACTED] indicated that the applicant's wife stated that she would not join the applicant in Mexico, as she cannot fathom living in the conditions she experienced there. *Id.* He explained that the applicant's wife stated that she would rather reside and raise her children alone in the United States.

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States at this time. The applicant has not shown that his wife will experience extreme hardship should she remain in the United States without him. The applicant's wife expressed that she will endure emotional hardship if she remains separated from the applicant. However, the brief statements from the applicant's wife do not distinguish her emotional challenges from those commonly experienced when spouses reside apart due to inadmissibility.

The AAO has carefully examined the psychological evaluation from [REDACTED]. It is noted that the evaluation was generated after a single meeting and for the purpose of this proceeding, thus it does not represent an ongoing relationship with a mental health professional or treatment for a mental health disorder. [REDACTED] concluded that the applicant's wife is suffering from depression due to the applicant's absence. [REDACTED] stated that the applicant's wife's depression appears to be worsening, yet his conclusion is not based on actual treatment or his direct knowledge of her condition over time, as he only evaluated her on a single occasion. While [REDACTED] noted physical and emotional symptoms experienced by the applicant's wife, he did not describe circumstances that sufficiently distinguish the applicant's wife's emotional hardship from that which is commonly experienced by families who are separated due to inadmissibility.

Federal court and administrative decisions have held that 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 being deported.

The AAO acknowledges that acting as a single parent for two children often involves significant emotional, physical, and economic challenges, and that the applicant's wife would likely encounter hardship if caring for her two children without the applicant's daily assistance. Yet, such situations are a common result when spouses reside apart due to inadmissibility. [REDACTED] reported that the applicant's wife receives support from her parents including childcare assistance, thus it is evident that the applicant's wife would have assistance. The applicant's wife previously stated that she experienced hardship when working and caring for her children. This statement indicates that, while she previously experienced significant challenge, she is capable of working while caring for her children.

The applicant has not provided any financial documentation in the present proceeding. Thus, the applicant has not shown that his wife is experiencing financial hardship in his absence. As the applicant's wife resides with her parents and brother, the record is unclear regarding her regular income needs or housing costs. Nor has the applicant indicated his income in Mexico. Thus, the applicant has not shown that his wife will experience economic hardship should she remain in the United States.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will endure extreme hardship if he is prohibited from entering the United States and she remains.

The applicant also has not shown that his wife will suffer extreme hardship should she relocate to Mexico to maintain family unity. The applicant's wife described challenging conditions in her husband's home town in Mexico, including crowded family living space and health challenges for her children. However, the applicant has not shown that he and his wife must reside in his hometown should they live for a longer duration in Mexico. The applicant has not shown that his wife must live in the conditions she described.

As noted above, the applicant has not provided sufficient documentation to show that his wife would encounter significant economic hardship should they reside in Mexico.

It is noted that the applicant's wife would not endure the hardship of separation from the applicant should she relocate to Mexico.

The record contains references to hardships that would be 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 record contains references to illness the applicant's children endured when visiting Mexico. Yet, the applicant has not submitted any medical documentation to show that his children were ill or that they otherwise have medical conditions that cannot be treated in Mexico.

The applicant's wife stated that she wishes for her children to be educated in the United States, and [REDACTED] noted that the applicant's wife asserted that she would never subject her children to an inferior education in Mexico. *Psychological Evaluation* at 7. However, the applicant's children are ages five and seven, thus they are in the early years of their education. The applicant has not submitted any evidence such as a statement from a teacher or education professional to show that his children would be negatively affected by attending a school in Mexico. The AAO acknowledges that temporarily foregoing the opportunity to have her children attend school in the United States constitutes emotional hardship for the applicant's wife. However, as the applicant last departed the United States on April 19, 2004, pursuant to section 212(a)(9)(B)(i)(II) of the Act he must remain outside the country until April 19, 2014. Thus, should the applicant and his family reside in Mexico for the duration of his inadmissibility, they may return in approximately four and one-half years and his children may then resume their education in the United States.

Considering all stated hardships to the applicant's children, the applicant has not shown that his children would suffer extreme hardship in Mexico, or that their challenges would elevate his wife's suffering to extreme hardship.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship, whether she joins him in Mexico or remains in the United States. Thus, the applicant has not established that denial of the present waiver application “would result in extreme hardship” to a qualifying relative, 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 he 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.