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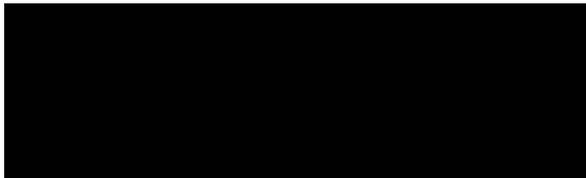
U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

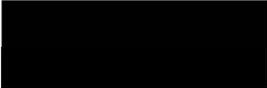


U.S. Citizenship
and Immigration
Services

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FILE:  Office: MEXICO CITY (CIUDAD JUAREZ) Date: **JAN 22 2010**

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)

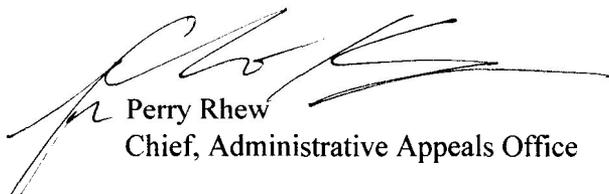
ON BEHALF OF APPLICANT:

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 and children.

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 December 6, 2006.

On appeal, the applicant's husband states that he and his family are experiencing significant hardship due to the applicant's absence. *Statement from the Applicant's Husband*, submitted December 29, 2006.

The record contains statements from the applicant's husband; medical documentation for the applicant's daughter; a copy of the applicant's daughter's birth certificate; a copy of the applicant's husband's birth certificate; a copy of the applicant's marriage certificate; a psychological evaluation of the applicant, 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 on or about June 17, 2001. In 2004, she was placed in removal proceedings in Immigration Court. An Immigration Judge granted her voluntary departure, and she left the United States on December 7, 2005. Based on the foregoing, the applicant accrued over three 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 states that he and his family are experiencing significant hardship due to the applicant's absence. *Statement from the Applicant's Husband*, submitted December 29, 2006. He explains that he and the applicant have a U.S. citizen daughter with a medical condition, congenital torticollis, that requires therapy. *Id.* at 1. He provides that he and the applicant need to reside together so they can care for their daughter. *Id.* He states that he cannot afford to support his household in the United States and the applicant's in Ojinaga, Mexico. *Id.* He asserts that he will have to sell their home if his circumstances do not change. *Id.* He indicates that he does the best he can for his family, but that the applicant's standard of living in Mexico is poor. *Id.*

The applicant's husband previously stated that he cannot bring his daughter to the United States to live with him because his job requires him to be out of town for a week at a time. *Prior Statement from the Applicant's Husband*, undated. He indicated that his daughter will miss out on a U.S.

education and good life should she remain in Mexico. *Id.* at 1. The applicant's husband stated that he cannot afford to miss work, thus he cannot visit the applicant and his daughter in Mexico. *Id.* He expressed that he is becoming depressed, which is affecting his job performance. *Id.*

The applicant submitted a brief statement from a physician, [REDACTED] who indicated that he has seen the applicant's daughter since her birth, and that she was diagnosed with congenital torticollis. *Statement from* [REDACTED] dated December 19, 2006. [REDACTED] stated that the applicant's daughter is receiving physical therapy on her neck, and that she needs the applicant to come to the United States so that the applicant's daughter can continue her therapy. *Id.* at 1.

The applicant provided a psychological report that evaluates her mental health. The report indicated that she has hypertension related to the threat of being denied a visa. *Psychological Evaluation*, dated December 7, 2005.

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's husband stated that he is experiencing financial hardship due to supporting the applicant's household in Mexico and his in the United States. However, the applicant has not submitted any documentation of her husband's income, her husband's regular expenses in the United States, or her expenses in Mexico. Nor has the applicant asserted or shown that she is unable to work to help meet her needs in Mexico. The applicant's husband stated that he may have to sell his home if the applicant does not return to the United States, yet the applicant has not provided any evidence to show that she and her husband own a home. Accordingly, the applicant has not shown by a preponderance of the evidence that her absence is causing her husband significant financial hardship.

The applicant's husband expressed that he is experiencing emotional hardship due to separation from the applicant and his daughter. The AAO acknowledges that the separation of spouses and children often results in significant psychological consequences, and that the applicant's husband is enduring emotional hardship due to the applicant's and his daughter's absence. Yet, the applicant has not provided adequate explanation or evidence to distinguish her husband's emotional hardship from that which is commonly expected when family members reside apart 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 (9th 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 (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. *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 applicant's husband reported that his daughter has been diagnosed with congenital torticollis for which she requires therapy. The applicant submitted a brief statement from her daughter's physician attesting that her daughter requires therapy. However, while [REDACTED] indicated that the applicant's presence is required in the United States so that her daughter can receive therapy, he did not describe the therapy or otherwise explain why it may not be performed with the applicant in Mexico. [REDACTED] did not state the severity of the applicant's daughter's condition, or indicate whether she requires exercises with the continued participation of a therapist. The applicant has not shown that appropriate therapy is unavailable in Mexico, such that her daughter may not continue any needed services there.

The applicant's husband indicated that he is concerned for his daughter's education and quality of life in Mexico. Yet, the applicant has not shown that her daughter will lack educational opportunities or face unusual hardships in Mexico. It is noted that 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. It is reasonable to expect that hardship experienced by the applicant's daughter will have an emotional impact on the applicant's husband. However, the applicant has not shown that her daughter will encounter hardship in Mexico that will elevate the applicant's husband's challenges to extreme hardship.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he remain in the United States without her.

The applicant has not asserted or shown that her husband would endure hardship should he relocate to Mexico. In the absence of clear assertions from the applicant, the AAO may not speculate as to the hardships her husband may face in Mexico. 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. In the present matter, the applicant has not submitted sufficient explanation or evidence to show that her husband will suffer extreme hardship should he join her in Mexico to maintain family unity.

Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver of inadmissibility 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 she merits a waiver as a matter of discretion.

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.