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



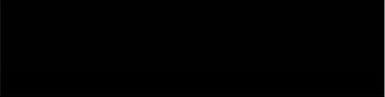
U.S. Citizenship  
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**JAN 22 2010**

FILE:  Office: MEXICO CITY (CIUDAD JUAREZ) Date:  
(CDJ 2004 640 220 relates)

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)

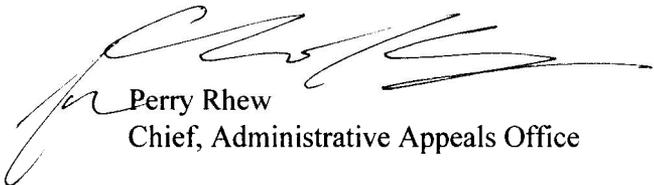
ON BEHALF OF APPLICANT:

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.

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 29, 2006.

On appeal, the applicant's husband explains that his family is suffering emotionally and financially due to the applicant's absence from the United States. *Statement from the Applicant's Husband on Form I-290B*, dated January 20, 2007.

The record contains statements from the applicant's husband and son; documentation regarding the applicant's husband's employment; copies of bills for the applicant's family; documentation regarding the applicant's son's educational activities; a copy of the applicant's husband's birth certificate; a copy of the applicant's husband's naturalization certificate, and; documentation regarding the applicant's unlawful presence in the United States. The applicant further provided documents in a foreign language. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. With the exception of the untranslated documents, the entire record was reviewed and considered in rendering this decision.

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 March 1997. She remained until she voluntarily departed in April 2005. Accordingly, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until she departed in April 2005, totaling approximately eight years. 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 explains that his family is suffering emotionally and financially due to the applicant's absence from the United States. *Statement from the Applicant's Husband on Form I-290B* at 1. The applicant's husband previously stated that his two sons have been separated and that he is concerned for how it will affect them. *Statement from the Applicant's Husband*, undated. He explained that his four-year-old son will begin school in Mexico where English is not spoken, and in a small school in a dangerous city. *Id.* at 1. He stated that the applicant does not have medical insurance for her and their younger son, thus their proper care and high healthcare costs are a concern. *Id.* He explained that his older son has bouts of depression due to separation

from the applicant and his brother. *Id.* He stated that his older son's education and health have been in decline. *Id.* He provided that the applicant and their younger son reside with a friend's family in Mexico but that they must find a new residence soon. *Id.* He noted that all of the applicant's relatives reside in Chicago. *Id.*

The applicant's husband provided that he cannot care for his children and work at the same time. *Prior Statement from the Applicant's Husband*, dated September 3, 2005. He explained that he is late on many payments such as credit cards, gas bills, and phone bills. *Prior Statement from the Applicant's Husband*, dated December 27, 2005. He added that he is unable to purchase many groceries. *Id.* at 1.

The applicant's son stated that he has not seen the applicant or his younger brother in over a year. *Statement from the Applicant's Son*, dated January 24, 2007. He expressed that there is no one else who can motivate or guide him the way the applicant can, and thus he is experiencing emotional hardship. *Id.* at 1. He provided that he is becoming more aggressive and apathetic in school and in life. *Id.* He explained that he is transitioning from eighth grade to high school which is bringing new pressures such as gang affiliation and drugs, and that he is having difficulty distinguishing between right and wrong without the applicant. *Id.* He noted that the applicant's husband has been working harsh hours and double shifts to meet their needs, and that he is considering dropping out of school to help. *Id.*

The applicant provided documentation to show that disciplinary measures were initiated against her husband at his place of employment for excessive absenteeism.

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 has not shown that her husband will experience extreme hardship should he remain in the United States without her. The applicant's husband stated that he is enduring financial hardship due to the applicant's absence. However, the applicant has not stated or documented her husband's income, or provided sufficient explanation or evidence of his regular household expenses. The record shows that the applicant's husband has transferred funds to the applicant in Mexico, yet the applicant has not asserted or shown that she is unable to work to meet her needs. The applicant's older son indicated that the applicant's husband is working extended hours to cover their expenses, yet the applicant has not submitted any documentation from her husband's employer's that supports this assertion. The AAO acknowledges that the applicant's husband has faced some late payments, yet without an indication of his income and expenses, the AAO is unable to conclude that his prior late payments are evidence of economic challenges that rise to the level of extreme financial hardship.

The applicant's husband expressed that he is suffering emotional hardship due to separation from the applicant and his younger son. The AAO acknowledges that the separation of spouses, or parents and children, often results in significant psychological hardship. Yet, the applicant has not sufficiently distinguished her husband's emotional hardship from that which commonly occurs when family members 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 record contains references to hardships 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. It is reasonable to expect that an applicant’s children’s emotional state due to separation from either parent or a sibling will create emotional hardship for the qualifying relative.

In the present matter, the applicant’s older son has suffered decreased school performance and emotional hardship due to separation from the applicant and his younger brother, as well as witnessing the struggles of the applicant’s husband. The AAO acknowledges that this hardship is having a significant emotional impact for the applicant’s husband. The applicant’s husband expressed concern for his younger son’s experience in Mexico, including his attendance at a Spanish-speaking school, safety concerns, and lack of medical insurance. Yet, the applicant has not shown that her younger son has medical needs that cannot be met in Mexico, or that he must reside in an area with unusual security concerns. Nor has she shown that her younger son will face significant detriment due to attending a Spanish-speaking school. Accordingly, the applicant has not sufficiently distinguished her sons’ hardship from that which is commonly expected when family members reside apart due to inadmissibility, or otherwise shown that her sons’ emotional challenges are elevating her husband’s hardship to an extreme level.

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.