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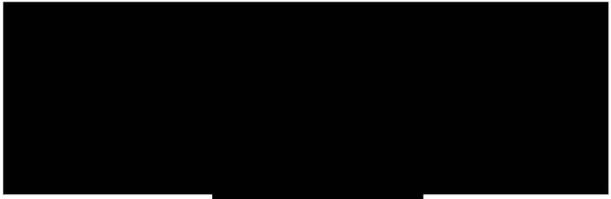
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

H2



FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date: **JAN 28 2010**

IN RE:



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)

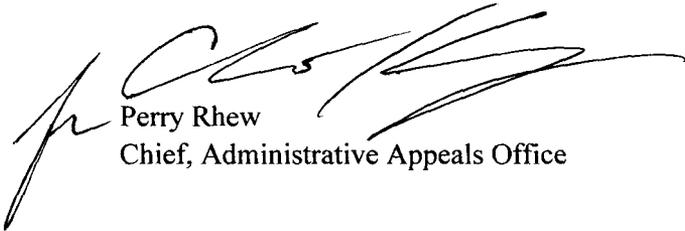
ON BEHALF OF APPLICANT:

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 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 naturalized 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 children 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 May 29, 2007.

The record contains, *inter alia*: a letter from the applicant; two letters from the applicant's husband, [REDACTED] a workers compensation injury report; a letter from a psychologist; medical documentation; a copy of the couple's U.S. citizen child's birth certificate; 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 November 2001 without inspection and remained until June 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, \_\_\_\_\_ states that his wife and their son have been living in Mexico since June 2006 and that he has had to travel back and forth to see them. \_\_\_\_\_ states that his son is not receiving the same level of education in Mexico that children in the United States are receiving and that his son "doesn't deserve to be in this kind of situation." \_\_\_\_\_ contends his wife has done everything that has been asked of her and claims that he has had to work very hard to give them everything they need. In addition, \_\_\_\_\_ states he is in a "deep depression and [that the] lack of concentration at work . . . is about to cause [him] to get fired." *Letters from* \_\_\_\_\_ both undated.

A letter from \_\_\_\_\_ physician states that \_\_\_\_\_ "is suffering medical and emotional problems related to his separation from his wife and son." *Letter from* \_\_\_\_\_ dated July 10, 2006; *see also Letter from* \_\_\_\_\_ dated June 28, 2007 (same). In addition, an injury report for a workers compensation claim indicates \_\_\_\_\_ twisted his left ankle on November 5, 2008, and was placed on light duty. *Work Care Clinic, Injury – Report*, dated December 17, 2008.

A letter from the applicant states that the couple's son has "developed an allergy to dust[,] animals[,] and wheat," and that he "needs medical checks and to live in a place far from animals and dust." In

addition, the applicant states that she wants to become a nurse and that she has no chance of becoming a nurse in Mexico. *Letter from* [REDACTED], dated April 4, 2008.<sup>1</sup>

A letter from a psychologist in Mexico states that the applicant and her son have been receiving psychological treatment. The psychologist states that the child has the following symptoms: “frequent irritability, prone to crying, being rebellious with his mother, anger with his father, excessive recurrent preoccupation when the separation or the anticipated separation from home or the figures related to home occur, excessive and persistent preoccupation for the possibility of such adverse event trigger by the separation of the mother or father.” According to the psychologist, the couple’s son has “[a]nxiety due to early separation during childhood.” *Letter from* [REDACTED], dated September 23, 2008.

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

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family’s circumstances. However, [REDACTED] does not discuss the possibility of moving back to Mexico, where he was born, to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. If [REDACTED] 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 (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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 son’s anxiety and the related symptoms he has exhibited in Mexico, although the input of any mental health professional is respected and valuable, the letter from the psychologist does not sufficiently address the prognosis, treatment, or severity of the child’s health

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<sup>1</sup> To the extent the record contains prescriptions for the couple’s son, they are written in Spanish and have not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. Consequently, the prescriptions cannot be considered.

conditions such that it would elevate the hardships [REDACTED] faces. For instance, the letter does not indicate how long the child has been in psychological treatment and does not discuss whether his symptoms go beyond what would normally be expected given a child's separation from one parent. Regarding the child's purported allergy to dust, animals, and wheat, there is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of the child's allergies. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical or mental health condition or the treatment and assistance needed by the applicant's son and the impact of the child's health conditions on [REDACTED]

To the extent [REDACTED] has "medical and emotional problems," the letter from [REDACTED] physician fails to specify or elaborate on [REDACTED] alleged problems. *Letter from [REDACTED] supra; Letter from [REDACTED] supra.* Although [REDACTED] states that he is in a deep depression and that his lack of concentration at work may get him fired, *Letter from [REDACTED] undated*, there is insufficient evidence to show that his hardship is beyond what would normally be expected. There is no evidence from any mental health professional diagnosing [REDACTED] with depression or any other mental health problem, and there is no letter or other documentation from his employer or a co-worker describing how his depression or lack of concentration has affected his work.

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.