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Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
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FILE:

Office: MEXICO CITY (CIUDAD JUAREZ) Date: **JAN 28 2010**

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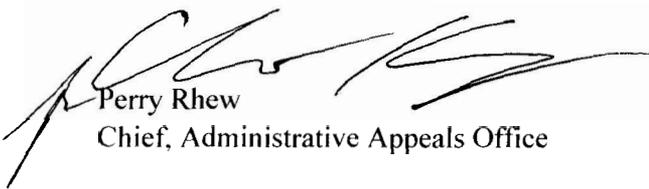
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 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 June 2, 2006.

On appeal, the applicant's representative asserts that the applicant's husband and children will experience extreme hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant's Representative*, undated.

The record contains statements from the applicant's representative, the applicant's church, the applicant's husband's uncle, the applicant's husband's employer, and the applicant's husband; a copy of the applicant's husband's naturalization and birth certificates; a copy of the applicant's marriage certificate, and; information regarding the applicant's unlawful presence in the United States. 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 August 2000. She remained until September 2005. Accordingly, the applicant accrued over five 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 representative asserts that the applicant's husband and children will experience extreme hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant's Representative* at 1. The applicant's representative states that the applicant's two children are with the applicant in Mexico. *Id.* She explains that the applicant's husband has worked for the same company as a job superintendent since 1996. *Id.* She asserts that it would constitute an extreme hardship for the applicant's family for the applicant's husband to quit his current employment in the United States. *Id.* The applicant's representative contends that the applicant's husband will experience psychological affects if the applicant is prohibited from returning to the United States. *Id.* at 2. She notes that the applicant has other relatives in the United States with a legal immigration status, including her parents and three brothers who are permanent residents. *Id.*

The applicant's representative states that the applicant's husband had two brothers who were killed during a robbery in Memphis, Tennessee. *Id.* She asserts that the applicant's husband would endure more emotional hardship if he loses the applicant's presence. *Id.*

The applicant's representative indicates that the applicant's family is active with their church which shows community ties in the United States. *Id.*

The applicant's representative states that the applicant's children speak English and need to attend school in the United States. *Id.*

The applicant's representative cites *Bedoya Valencia v. I.N.S.*, 66 F.3d 891 (2d Cir. 1991), and suggests that section 212(a)(9)(B)(i)(II) of the Act unconstitutionally denies equal protection to those who enter the United States without inspection and depart to "get their papers finalized properly." *Id.* at 1.

The applicant provided a letter from a pastor to confirm that her husband has been an active member of his congregation for over three years. *Letter from* [REDACTED] dated June 26, 2006.

The applicant submitted a letter from her husband's employer that indicates that the applicant's husband has worked his way up to being a job superintendent for roofing projects, and that he is an asset to the company. *Letter from* [REDACTED], dated June 22, 2006.

The applicant's husband stated that he is experiencing significant emotional hardship due to living separately from the applicant and their children. *Statement from the Applicant's Husband*, dated September 29, 2005. He indicated that he must support his household in the United States and the applicant's household in Mexico. *Id.* at 1. He noted that his children will only experience school in Spanish in Mexico which will hinder their progress when they return to the United States. *Id.* He stated that his children have only had medical care from a single doctor in the United States, and that they will endure hardship if they must see a new doctor in Mexico. *Id.* The applicant's husband indicated that he and the applicant were in the process of "signing the papers" to their home in which they were living, and that the applicant's absence from the United States is interfering with the process. *Id.* The applicant's husband asserted that all of his family resides in his area in the United States, and that the applicant and their children are living among strangers in Mexico. *Id.* at 1-2.

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 expressed that he will endure emotional hardship if he remains separated from the applicant and their children. However, the brief statement from the applicant's husband does not distinguish his emotional challenges from those commonly experienced when spouses or children reside apart due to inadmissibility. The applicant's representative asserted that the applicant's husband had two brothers killed which heightens his emotional hardship, yet the applicant has not provided any documentation to support this assertion such as a police report, birth or death certificates of her

husband's alleged brothers, or other documentation to show her husband has a vulnerable emotional state.

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 indicated that he is experiencing economic hardship due to supporting his household and the applicant's household in Mexico. However, the applicant has not submitted an explanation or documentation to show her or her husband's income or expenses, in the United States or Mexico. Thus, the AAO lacks sufficient documentation to assess the applicant's husband's financial situation. Nor has the applicant asserted or shown that she is unable to work in Mexico to help meet her needs.

The applicant's husband indicated that he and the applicant were in the process of "signing the papers" to their home in which they were living, and that the applicant's absence from the United States is interfering with the process. Yet, the applicant has not explained what papers she and her husband were in the process of signing, or shown that her absence has impacted a financial transaction such as a home purchase. Thus, the applicant has not established that her absence has created a specific hardship for her husband related to their residence.

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. The applicant's husband asserted that his children will benefit from attending school in the United States and that they will encounter hardship if they must see a different doctor in Mexico. However, the applicant has not asserted or shown that her children have medical needs that can only be effectively treated by their physician in the United States. Nor has the applicant distinguished her children's educational needs from those of ordinary children such to show that they require educational services in the United States. Thus, the applicant has not established that her children are suffering consequences that can be distinguished from those ordinarily experienced. The applicant has not shown that her children's hardship is elevating her 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 endure extreme hardship if she is prohibited from entering the United States and he remains.

The applicant also has not shown that her husband will suffer extreme hardship should he relocate to Mexico to maintain family unity. The applicant's representative noted that the applicant's husband and family members would endure hardship if the applicant's husband relinquishes his stable employment in the United States. The AAO acknowledges that unwillingly resigning from his job would create emotional hardship for the applicant's husband. Yet, this is a common necessity when spouses relocate abroad to maintain family unity. As noted above, the applicant has not provided explanation or documentation to show her husband's income or her family's expenses. Nor has she asserted or shown that she and her husband would be unable to work in Mexico to meet their financial needs. Thus, the applicant has not established that the loss of her husband's current employment would create unusual emotional or economic hardship for him.

The applicant's husband indicated that he has family members residing in the United States, thus he would be separated from them should he relocate abroad. However, the applicant has not identified any of her or her husband's family members in the United States, or provided documentation to support their presence or status. The AAO acknowledges that the applicant's husband will endure the separation from his church should he relocate to Mexico, yet the applicant has not shown that this would create unusual hardship for him.

It is noted that the applicant's husband is a native of Mexico, thus it is assumed that he would not face the challenge of adapting to an unfamiliar language or culture should he return there. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will endure extreme hardship should he relocate to Mexico.

The applicant's representation indicated that the applicant's parents are permanent residents in the United States. However, the applicant has not provided any documentation to support this contention such as copies of their permanent resident cards. Accordingly, the applicant has not shown that hardship to her parents may serve as a basis for a waiver under section 212(a)(9)(v) of the Act. Nor has the applicant asserted that denial of the present waiver application will create hardship for her parents.

The applicant's representative cites the decision of the Second Circuit in *Bedoya Valencia v. I.N.S.*, 6 F.3d 891 (2d Cir. 1991), and suggests that section 212(a)(9)(B)(i)(II) of the Act unconstitutionally denies equal protection to those who enter the United States without inspection and depart to "get their papers finalized properly." *Statement from the Applicant's Representative* at 1. In *Bedoya Valencia v. I.N.S.*, the Second Circuit examined the availability of relief under former section 212(c) of the Act for an individual who had departed the United States and reentered without inspection during the pendency of his deportation proceedings. *Bedoya Valencia v. I.N.S.* at 892-93. The Second Circuit held that a deportee whose ground of deportation could have no conceivable analogue in the exclusion setting should also be eligible for relief under former section 212(c) of the Act, in keeping with the equal protection guarantee of the Fifth Amendment due process clause. *Id.*

at 895-97. However, the applicant's representative has not discussed the facts or decision in *Bedoya Valencia v. I.N.S.* or related it to the current proceeding. *Bedoya Valencia v. I.N.S.* did not address waivers of inadmissibility under section 212(a)(9)(B)(i)(II) pursuant to section 212(a)(9)(B)(v) of the Act. Nor did the Second Circuit identify generalized constitutional requirements that apply to all individuals who seek relief after entering the United States without inspection, or who depart the United States in order to apply for admission in a legal status. Thus, the applicant's representative has not shown that the decision in *Bedoya Valencia v. I.N.S.* is relevant to the present matter, and the applicant has not established that any constitutional rights she may have were violated by the district director's decision.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship, whether he joins her in Mexico or remains in the United States. The applicant has not shown that she has other relatives whose hardship may be considered under section 212(a)(9)(B)(v) of the Act. 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 she 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.