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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

H2

[redacted]

JAN 28 2010

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
(CDJ 2004 635 038 relates)

IN RE: [redacted]

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), and Section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

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).

Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, 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 Immigration and Nationality Act (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, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation. 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), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and child in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Officer in Charge*, dated February 16, 2007.

The record contains, *inter alia*: a letter from the applicant's husband, ; a psychological evaluation for ; background materials addressing the effects of children who grow up without their fathers; a letter from employer; copies of receipts indicating sends money to his wife in Mexico; medical documentation for ; a copy of the 2006 U.S. Department of State Country Reports on Human Rights Practices for Mexico; 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)(6)(C)(i) of the Act provides:

> In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides:

> **(1)** The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien.

Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), 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 officer in charge found, and the applicant does not contest, that on August 25, 2002, she attempted to enter the United States by presenting her visa with altered documents at the Algodones, California port of entry. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact to procure an immigration benefit. In addition, the officer in charge found, and the applicant does not contest, that she entered the United States without inspection in August 2002 and remained until her departure in February 2006. The applicant accrued unlawful presence for over three years. She now seeks admission within ten years of her 2006 departure. Accordingly, she is also inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for a period of one year or more.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the 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); section 212(i) of the Act, 8 U.S.C. § 1182(i). 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 he was born in Mexico and came to the United States at an early age. He states he has a permanent job and needs his job to support his wife and their two-year old son. contends that despite a stable salary, he cannot afford to live in the United States and support his wife in Mexico. In addition, states he is extremely concerned about his son's psychological stability and psychosocial growth because his son is accustomed to living with both parents. *Letter from* , dated February 11, 2006.

A psychological evaluation of in the record states that he is suffering a major depressive episode. According to the psychoanalyst, reported changes in appetite, weight loss, loss of sleep, decreased energy, recurrent thoughts of death, and difficulty concentrating. In addition, reported having a loss of libido, pain in his foot, and hepatitis. The psychoanalyst states that the absence of wife has severely affected every area of his life. The psychoanalyst further states that has lived in the United States since he was one year old. The report states that began feeling very depressed after his father passed away in 2000 from cancer. met his wife, his first girlfriend, during the "hardest period of his life, where he felt hopeless, lonely and despairing for his lack of capacity to improve his father's health." The report further states that did not develop a close relationship with his father until it was almost too late and his father passed away. purportedly fears that a similar situation will occur with his own son. Furthermore, the psychoanalyst contends talks with his wife on the phone and sends her text messages every day. He purportedly "finds the situation unbearable" and "feels he doesn't have a life" since his wife's departure. *Psychological Evaluation from* undated.

Medical documentation in the record indicates was prescribed medication for gastroesophageal reflux disease and was diagnosed with foot cellulitis. *Kaiser Permanente Visit Summary*, dated March 29, 2007; *Kaiser Permanente Aftercare Instructions*, dated March 4, 2007.

After a careful review of the record, it is not evident from the record that the applicant's husband has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, aside from notes from the psychoanalyst stating that "think[s] that it would be going backwards" to move to Mexico, himself does not discuss the possibility of moving to Mexico to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. If 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 (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. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th 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).

Regarding the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record is based on a single interview the psychoanalyst conducted with on March 16, 2007. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. Therefore, the conclusions reached in the submitted evaluation do not reflect the insight and elaboration commensurate with an established relationship with a psychoanalyst, thereby diminishing the evaluation's value to a determination of extreme hardship. Moreover, the psychologist indicates that depression is related to his wife's immigration case, but does not comment on whether it might lessen if he relocated to Mexico with his wife and child, and the applicant does not discuss the availability of mental health care in Mexico.

To the extent the record contains documentation that has gastroesophageal reflux disease and foot cellulitis, the record fails to provide sufficient insight into his conditions. There is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of health conditions. Indeed, although counsel contends "may require surgery [from purported kidney stones] and he cannot imagine going through this critical time without his wife by his side," *Brief in Support of Appeal* at 4-5, undated, significantly, himself makes no mention of any medical problems in his letter. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

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, 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.