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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**

H2

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

IN RE:

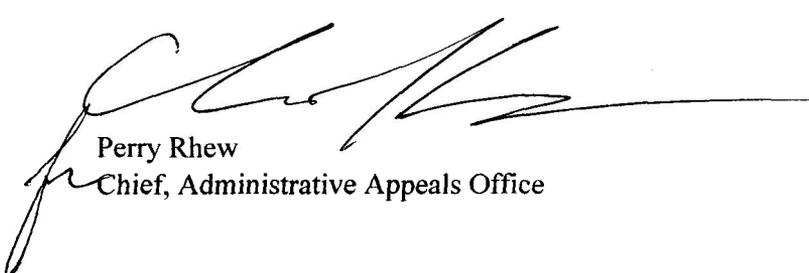
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

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 child 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 December 5, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on February 28, 2004; a letter and a deposition from documentation confirming the applicant's pregnancy; letters of support, including from mother; a psychological report for ; copies of bills; tax documents; copies of birth certificates for and the couple's U.S. citizen child; background materials addressing crime in 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)(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 January 2004 without inspection and remained until October 2005. The applicant accrued unlawful presence for over one year. She now seeks admission within ten years of her 2005 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, [REDACTED] states that he has suffered financially since his wife departed the United States. [REDACTED] states he makes only \$23 per hour and needs to divide that money between his living expenses in the United States and his wife's and child's expenses in Mexico. In addition, [REDACTED] states that his wife is eight months pregnant and that he needs to be by her side. He contends he thinks about his two-year old daughter a lot and that both he and his daughter are suffering. [REDACTED] contends he is depressed and his daughter does not call him "dad" anymore. [REDACTED] also contends he has been struggling with health problems. He states that he sits at home thinking about his wife until late at night, making his head spin. He contends his "head has been h[ur]ting gradually," and that he cannot control his temper, which has caused problems with people at work and at home. [REDACTED] claims he is depressed and has missed days of work as a result. [REDACTED] a construction worker, contends he has "been working up in a scaffold thinking of [his] wife which made [him] think about jumping off a twelve floor building." He states he needed help to get off the scaffolding and took a day off. Furthermore, [REDACTED] claims he could not live in Mexico because he could not find employment there and there is a high volume of crime. *Letter from* [REDACTED] undated; *Sworn Deposition of* [REDACTED] dated October 12, 2005 (stating he would be unable to

move to Mexico “because he is employed in the United States and has various obligations to comply with, which makes it very difficult to abandon the country”).

A letter from [REDACTED] mother states that her son has suffered emotionally and economically since his wife left the country. According to [REDACTED] mother, [REDACTED] gets depressed a lot, “is not the person he used to be[, and] gets distracted a lot and doesn’t go out.” In addition, [REDACTED] mother contends he pays rent both in the United States and in Mexico and that he has to pay his wife’s medical expenses, which “he should not have to [do] because he has medical insurance here in the states.” *Letter from [REDACTED] dated February 5, 2007.*

A psychological evaluation for [REDACTED] states that his affect was “neutral throughout the evaluation, but manifested into a depressive demeanor whenever considering the present separation he has from his wife and daughter.” According to the psychologist, after being administered a battery of psychological tests, [REDACTED] “test results appeared to be within ‘normal limits[,]’ and “no primary psychiatric diagnosis could be offered. . . . [REDACTED] evidenced no depression on the Beck Depression Inventory - II (score of 2), he manifested no anxiety on the Beck Anxiety Inventory (score of 4), and he expressed no issues of hopelessness on the Beck Hopelessness Scale (score of 3).” However, the psychologist contends that [REDACTED] “was attempting to present the best possible attitudes and opinions in this test,” and “is markedly defensive against emotional reactions of depression and anxiety,” and ultimately diagnoses [REDACTED] with “major depressive disorder, single episode, moderate.” *Immigration Evaluation by [REDACTED] dated January 15, 2007.*

After a careful review of the record, 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, 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 (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 psychological testing administered on December 27 and 28, 2006, and two interviews with [REDACTED] on December 27, 2006, and January 5, 2007. The record thus fails to reflect an ongoing relationship between a

mental health professional and the applicant's husband. The conclusions reached in the submitted evaluation do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby diminishing the evaluation's value to a determination of extreme hardship. Moreover, the evaluation itself states that the test results for [REDACTED] evaluation appeared within normal limits and that "no primary psychiatric diagnosis could be offered." *Immigration Evaluation by [REDACTED]*, *supra*, at 5.

[REDACTED] claims that he cannot move to Mexico to be with his wife because he could not make enough money to support his family in Mexico where there is a high crime rate. The record indicates that [REDACTED] is currently twenty-seven years old, works in construction, and was raised in a Spanish-speaking family. The record does not show that he has any physical or mental health issues that would render his transition to living in Mexico an extreme hardship. Even assuming [REDACTED] experiences some financial difficulty if he moves to Mexico to avoid the hardship of separation from his wife, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

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.