

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

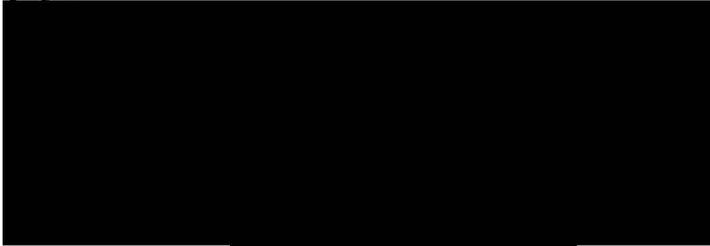
U.S. Department of Homeland Security
20 Mass. Ave, N.W. Rm. 3000
Washington, DC 20529



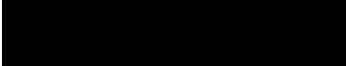
U.S. Citizenship
and Immigration
Services

H3

PUBLIC COPY



FILE:



Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

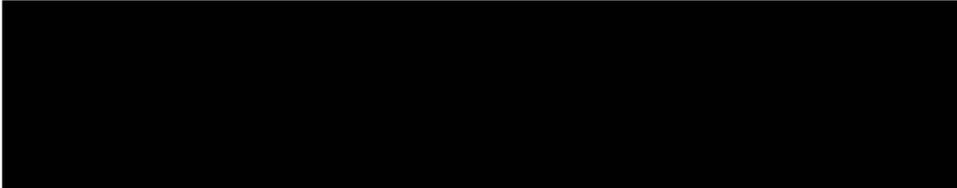
Date: FEB 01 2008

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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City (Ciudad Juarez), Mexico. The matter came before the Administrative Appeals Office (AAO) on appeal. The AAO rejected the appeal as untimely filed. The AAO will reopen the matter sua sponte based on new evidence that the appeal was filed within 33 days of the district director's denial. Upon review of the appeal on the merits, 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 in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with her U.S. citizen husband and two sons.

The district director found that, based on the evidence in the record, the applicant failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *Decision of the District Director*, dated July 7, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband will suffer emotional and economic hardship should the applicant be prohibited from entering the United States. *Correspondence from Counsel*, dated August 7, 2006. Counsel contends that hardship to the applicant's children may be considered despite the fact that they are not qualifying relatives, as their hardship has a impact on the applicant's husband. *Id.* Counsel states that the applicant previously obtained inadequate assistance from a notary in filing her Form I-601 application for a waiver, and that she should not be prejudiced by her prior lack of adequate evidence. *Id.*

The record contains correspondence from counsel; statements from the applicant, her husband, and her father; a copy of the naturalization certificate of the applicant's husband; copies of the permanent resident cards of the applicant's mother-in-law and father; a copy of the applicant's husband's naturalization certificate; copies of naturalization certificates and permanent resident cards for the applicant's husband's siblings; a copy of a naturalization certificate for the applicant's uncle; copies of the applicant's sons' birth certificates; a psychological evaluation of the applicant's husband conducted by a licensed psychologist; a letter verifying the applicant's husband's employment; letters from a pediatrician in Mexico assessing the health of the applicant's sons, and; tax records. The entire record was reviewed and considered in rendering a 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.

The record reflects that the applicant entered the United States without inspection in approximately May 2002, and she remained until October 2005. Therefore, the applicant accrued over three years of unlawful presence. The applicant now seeks readmission, thus she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. 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 alien himself experiences upon being found inadmissible is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 pursuant to section 212(i) of 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant’s husband or mother would possibly remain in the United States if the applicant departs. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

The applicant’s husband explained that the applicant departed the United States when she was pregnant with their second son, and that their second son was born in Mexico. *Statement from the Applicant’s Husband*, at 1 undated. He stated that he missed the birth of his second son, and he has suffered emotional hardship due to being separated from the applicant and his children. *Id.* He provided that he fears his health will deteriorate due to prolonged separation from his family. *Id.* He explained that he has only traveled to Mexico once to visit the applicant due to the financial burden of maintaining two households. *Id.* at 1-2. The applicant’s husband stated that his first son became sickly while living in Mexico, and that his son is upset with him for being apart. *Id.* at 2.

The applicant’s husband stated that he would suffer economic hardship if he relocated to Mexico to be with the applicant, as he would be unable to earn income comparable to what he receives in the United States. *Id.* He explained that he has many relatives in the United States, and that he wishes to remain in the country indefinitely. *Id.*

The applicant’s husband stated that he and the applicant received poor assistance with their initial filing, as they were not informed that the applicant’s father is a qualifying relative for the purposes of the present waiver proceeding. *Id.*

The applicant stated that her sons are suffering due to separation from her husband. *Statement from the Applicant*, dated August 4, 2006. The applicant explained that she has had health problems and she has had to care for her sons alone in Mexico. *Id.*

The applicant’s father explained that he is experiencing emotional distress due to the applicant living far away. *Statement from the Applicant’s Father*, undated. He stated that the applicant and her sons are sick, and that she is unable to be in the United States with him and her husband. *Id.* He expressed that he is close with the applicant, and that he wishes to be reunited with her. *Id.*

The applicant provided an evaluation of her husband’s mental health from [REDACTED] a licensed psychologist. [REDACTED] stated that testing placed the applicant’s husband in the “moderate range” of depression and anxiety. *Report from [REDACTED] at 4, dated July 13, 2006.* [REDACTED] indicated that the applicant’s husband reported more problems than are typically reported by men age 36 to 59, particularly anxiety and depression. *Id.* [REDACTED] provided that the applicant’s husband’s scores on the Depressive Problems and Anxiety Problems scales were in the “borderline clinical range,” yet his scores on numerous other attributes or disorders “were in the normal range.” *Id.* at 4-5. [REDACTED] expressed the opinion that the applicant’s husband’s depression

levels will increase if he is unable to reunite with the applicant. *Id.* at 5. [REDACTED] made reference to the applicant's husband's reaction to "all the debts the family has accrued." *Id.* at 6. Later in her report, [REDACTED] stated that the applicant's husband is experiencing "severe levels" of depression and anxiety. *Id.* [REDACTED] indicated that the applicant's husband's prolonged separation from the applicant and his children "would result in the development of a full Major Affective Disorder." *Id.* at 7.

[REDACTED] commented that "[t]he chances of [the applicant's husband] being able to find employment that pays sufficiently to support himself and his family in a foreign country are very poor." *Id.* at 6. [REDACTED] quoted from an article on economic conditions in Latin America to support her assertion that the applicant's husband would have difficulty finding employment in Mexico. *Id.*

[REDACTED] further commented that the applicant's husband has a 40 percent English language proficiency, and two sisters in Mexico. *Id.* at 2.

The applicant provided a letter from a pediatrician, [REDACTED], assessing the health of each of her sons. [REDACTED] stated that the applicant's oldest son, age two years and six months at the time of evaluation, has had "continuous health problems of [a] respiratory type and also started with refusal of nutrition as well as continuous and constant irritability as well as mood changes and periods of sadness do [sic] to missing his father." *Letter from [REDACTED] regarding [REDACTED] dated July 10, 2006.* [REDACTED] stated that the applicant's older son "[d]oes not have any other sign of importance other than . . . the distancing from his father as a probable cause of his present [situation.]" *Id.* [REDACTED] stated that the applicant's younger son, age four months at the time of evaluation, "started with refusal of nutrition as well as continuous and constant irritability as well as mood changes which are secondary to the distancing from his father." *Letter from [REDACTED] regarding [REDACTED] dated July 10, 2006*

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's husband explained that he is experiencing emotional hardship due to separation from the applicant and his children. While the AAO acknowledges that such separation is emotionally difficult, the applicant has not shown that her husband is suffering unusual consequences that go beyond those commonly experienced by the family members of those deemed excludable or inadmissible.

The AAO has examined the psychological evaluation from [REDACTED] regarding the applicant's husband's mental health. It is noted that [REDACTED] conclusions are not fully supported by the testing results and analysis in her report. For example, [REDACTED] stated that testing placed the applicant's husband in the "moderate range" of depression and anxiety, yet she later concluded that the applicant's husband is experiencing "severe levels" of depression and anxiety. [REDACTED] indicated that the applicant's husband's prolonged separation from the applicant and his children "would result in the development of a full Major Affective Disorder." However, [REDACTED] has not discussed whether the applicant's husband is receiving or requires follow-up mental health care, or whether such care would potentially prevent the development of a mental health disorder.

In her report, [REDACTED] expressed her opinion regarding the applicant's lack of employment opportunities in Mexico. However, she did not provide a full cite to the article she quoted, such that the AAO can review the source material for independent evaluation. Nor has [REDACTED] established that she is qualified to make professional assessments of the applicant's employability in Mexico.

The report from [REDACTED] is given due consideration, but it is not sufficient evidence to establish that, should the applicant be prohibited from entering the United States, her husband would suffer emotional consequences beyond those ordinarily experienced by the families of those who are inadmissible.

The applicant's husband stated that he is experiencing hardship due to separation from his two sons. It is noted that the applicant's older son was born in the United States, and he may return to the United States and reside with the applicant's husband. The applicant stated that her younger son "has his documents to return legally to the United States based on [her husband's] citizenship." *Statement from the Applicant*, at 1. Thus, the record supports that the applicant's children may return to the United States to reside with her husband if desired, and denial of the present waiver application does not mandate separating the applicant's husband from his children.

In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals 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 AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant should he remain in the United States. However, his situation is typical to the family members of those deemed inadmissible and does not rise to the level of extreme hardship.

Counsel contends that the applicant's husband is experiencing hardship due to the suffering of his two sons. Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. As counsel correctly suggests, 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. As is possible in the present case, when a child is separated from one parent, it is reasonable to expect that the child's emotional state due to separation would create emotional hardship for the qualifying relative. However, such situations are common and anticipated results of exclusion and deportation.

The AAO has examined the letters from [REDACTED] regarding the health of the applicant's sons. Dr. [REDACTED] expressed his opinion that the applicant's sons are experiencing consequences as a result of separation from the applicant's husband. However, the record lacks complete information to adequately support [REDACTED]'s conclusions. For example, [REDACTED] stated that the applicant's four month old son experienced "refusal of nutrition as well as continuous and constant irritability as well as mood changes which are secondary to the distancing from his father." Yet, the applicant's husband stated that he visited Mexico on one occasion since his wife and first son traveled there. The record does not reflect whether the

applicant's husband had seen his younger son at the time of [REDACTED] evaluation, such that his four month old son could have been experiencing physical symptoms association with separation from a parent.

The AAO recognizes that the applicant's husband will endure significant emotional consequences as a result of separation from the applicant should he remain in the United States. The AAO further acknowledges that the applicant's husband's hardship will be compounded due to sharing in his sons' loss of his daily presence. However, the applicant has not established that her husband will experience consequences that are sufficiently different or more severe than those commonly experienced by families who are separated as a result of deportation or exclusion.

The applicant's husband indicated that he is experiencing economic difficulty in supporting a household in the United States and in Mexico. However, the record lacks sufficient documentation of the applicant's and her husband's employment and resources. The applicant has not indicated whether she works in Mexico, and if so, what is her income. [REDACTED] made reference to the applicant's husband's reaction to "all the debts the family has accrued," however the record lacks any documentation of debts owed by the applicant or her husband. While the AAO acknowledges that the applicant's husband would likely have to relinquish his employment in the United States should he relocate to Mexico, the applicant has not shown that she and her family would be unable to meet their financial needs.

It is noted that the applicant's husband is a native of Mexico. As [REDACTED] provided that the applicant's husband has a 40 percent English language proficiency, it is assumed that he is comfortable communicating in Spanish and would not have difficulty adapting to Mexican culture. [REDACTED]

[REDACTED] indicated that the applicant's husband has two sisters in Mexico, thus he would have relatives there. The AAO acknowledges that the applicant's husband does not wish to return to Mexico. However, the record lacks adequate evidence to show that he would experience extreme hardship should he return there to join the applicant and his sons.

The applicant's father referenced that the applicant has had health problems in Mexico. However, the record lacks medical documentation to describe these health problems, such that the AAO can assess the impact they have on the applicant's husband and father.

The applicant submitted a brief statement from her father in which he expresses that he is close to the applicant. However, the applicant's father has not indicated that he relies on the applicant for assistance or support. While the AAO acknowledges that the applicant's father is suffering emotional difficulty due to separation from the applicant and his grandsons, the record does not describe hardships to her father that rise to the level of extreme hardship.

Counsel and the applicant's husband indicate that the applicant received poor assistance from a notary in preparing her initial Form I-601 waiver application. It is noted that all evidence provided by the applicant has been fully considered on appeal, and the applicant has had the opportunity to supplement the record with documentation that was omitted in the initial filing. Further, the applicant was not assisted by an attorney but by an agent. There is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on her behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf.*

Matter of Lozada, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

Based on the foregoing, the instances of hardship that will be experienced by the applicant's husband or father should the applicant be prohibited from entering the United States, considered in aggregate, do not rise to the level of extreme hardship. 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) 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.