

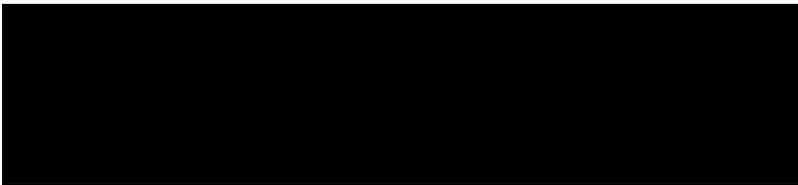
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



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FILE:



(CDJ 2004 719 121)

Office: MEXICO CITY, MEXICO  
(CIUDAD JUAREZ)

Date:

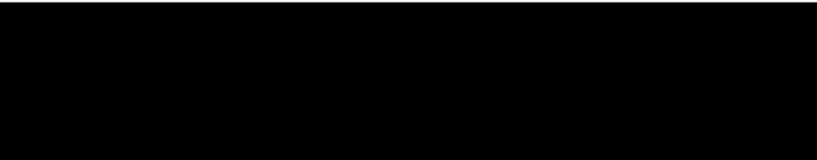
IN RE:



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.

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).

John F. Grissom

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico. 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 in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to a U.S. citizen and has a U.S. citizen child. She seeks a waiver of inadmissibility in order to reside in the United States with her family.

The district director found that based on the evidence in the record, the applicant had failed to establish that a qualifying relative would undergo extreme hardship as a result of her continued inadmissibility. *Decision of the District Director*, at 4, dated April 10, 2006. The application was denied accordingly. *Id.*

On appeal, the applicant's representative states that the applicant has demonstrated extreme hardship based on financial, medical, personal and other special factors. *Form I-290B Supplement*, at 1, undated.

The record includes, but is not limited to, the I-290B supplement, the applicant's spouse's statements, statements from family members, a mental health evaluation of the applicant's spouse and medical records for the applicant's daughter. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in November 2000 and departed the United States in May 2005. The applicant accrued unlawful presence from November 2000, the time she entered the United States, until May 2005, the time she departed the United States. The applicant 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 more than one year and seeking readmission within ten years of her May 2005 departure.

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.

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 or the applicant's child experience is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Mexico or in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Mexico. The applicant's spouse was evaluated by a social worker who states that the applicant's spouse tried to reside in Mexico and commute to work; the drive, hours and stress affected the applicant's spouse health and work productivity; and he did not want to risk his job and family's stability. *Mental Health Evaluation*, at 2, dated May 31, 2006. The record does not include evidence that the applicant or her spouse have sought or would encounter difficulty finding employment in Mexico or that that they would experience uncommon financial hardship there. The applicant's spouse states that his daughter was recently very sick with a high fever and bronchitis, and she would not have the same medical attention in Mexico. *Applicant's Spouse's Second Statement*, at 1, dated May 9, 2006. However, as previously indicated, the applicant's child is not a qualifying relative for the purpose of this proceeding and the record does not include evidence of the effect on the applicant's spouse of any hardship his daughter would encounter in Mexico. The record does not include evidence of any other types of hardship that the applicant's spouse would encounter in Mexico. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO finds that the record does not include sufficient evidence to establish that the applicant's spouse would experience extreme hardship if he relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that he has been miserable, he cannot visit the applicant due to his demanding job, he has gone to a psychiatrist due to his depression and he is nothing without the applicant. *Applicant's Spouse's First Statement*, dated December 12, 2005. The applicant's representative states that the applicant's spouse dreamed of buying a house for his family, he was approved for a loan and he did not proceed with the home purchase as his wife was not by his side. *Form I-290B Supplement*, at 2. The applicant's spouse states that he had a happy and stable family before the separation, his daughter cannot stay with the applicant as she would not have medical attention comparable to that she now receives, he takes his daughter to the doctor, his daughter was happy and now she wakes up crying and asking for the applicant, he misses work when he has to take care of her, and he does not have enough money to send to the applicant. *Applicant's Spouse's Second Statement*, at 1-2. A mental health evaluation prepared by a social worker states that the applicant's spouse is exhibiting symptoms of depression that are affecting his work and quality of life; the primary trigger for the symptoms is his separation from the applicant; the family is very close; the applicant's daughter has become more angry, rebellious and aggressive; the applicant's spouse has trouble concentrating, sleeping and has no motivation; the applicant's spouse has given up job opportunities to care for his daughter; he is very isolated and depressed; the applicant's spouse meets the criteria for a depression diagnosis; and his daughter is experiencing symptoms of depression. *Mental Health Evaluation*, at 1-3. Letters from the applicant's spouse's family and friends indicate that the applicant's spouse has become very sad in the applicant's absence. *Letters from Family and Friends*, various dates. The AAO notes that the evaluation of the applicant's spouse is based on a single interview, the social worker does not reach a diagnosis but only states that the applicant's spouse meets the diagnostic criteria for a depression diagnosis, there is no separate evaluation of the applicant's daughter documenting her behavioral problems or how the emotional hardship she may be experiencing affects the applicant's spouse, and there is no financial documentation to establish financial hardship. Based on the record, the AAO does not find that the applicant's spouse would experience extreme hardship if he remained in the United States without the applicant.

U.S. court decisions have repeatedly 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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) 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.