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U.S. Citizenship  
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FILE:



Office: CIUDAD JUAREZ, MEXICO

Date FEB 03 2009

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality 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).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge (OIC), Ciudad Juarez, Mexico, and 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 seeking readmission within 10 years of her last departure from the United States. The record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 in the United States with her United States citizen husband.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated August 22, 2006.

On appeal, the applicant, through counsel, contends that the OIC "underestimate[s] the level of hardship [the applicant's spouse] faces on a daily basis." *Form I-290B*, filed September 22, 2006. Additionally, counsel states that "[t]he absence of [the applicant] has created a major physical, emotional and financial void in [the applicant's husband's] life." *Id.*

The record includes, but is not limited to, counsel's letter, a declaration from the applicant's husband, letters from the applicant's friends, and a letter from [REDACTED] regarding the applicant's husband's back pain. The entire record was reviewed and considered in arriving at 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 [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 the present application, the record indicates that the applicant initially entered the United States in 1992 without inspection. On March 10, 2004, the applicant's naturalized United States citizen husband filed a Form I-130 on behalf of the applicant. On July 28, 2004, the applicant's Form I-130 was approved. In July 2005, the applicant departed the United States. On July 28, 2005, the applicant filed a Form I-601. On August 22, 2006, the OIC denied the Form I-601, finding the applicant accrued more than a year of unlawful presence and she failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until July 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her July 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel claims that since the applicant departed the United States, the applicant's husband has been suffering extreme hardship. *See counsel's letter*, dated September 19, 2006. [REDACTED] states the applicant's husband is "under tremendous emotional and physical stress" since the applicant departed the United States. *See letter from [REDACTED], North City Presbyterian Church*, undated; *see also counsel's letter, supra* ("[The applicant's husband] suffers physical, emotional, mental and financial hardship."). The AAO notes that even though [REDACTED] provided a brief letter regarding the impact of the applicant's removal on her husband's psychological state, there are no professional psychological evaluations for the AAO to review to determine if the applicant's

husband is suffering from any depression or anxiety, or whether any depression and anxiety is beyond that experienced by others in the same situation. [REDACTED] states the applicant's husband is suffering back pain from an injury that occurred in 1996, and she recommended that he has "further diagnostic tests performed." *Letter from [REDACTED]*, dated September 6, 2006. Counsel states that when the applicant was in the United States, her "income allowed the family to have the money for [the applicant's husband] to visit the chiropractor on a semi-regular basis." *Counsel's letter, supra*. However, the AAO notes that [REDACTED] states the applicant's husband "was last seen for therapy in 1997." *Letter from [REDACTED]*, *supra*. Counsel claims that since the applicant's husband "cannot complete heavy physical labor, he simply will not find a job [in Mexico]." *Counsel's letter, supra*. The AAO notes that even if the applicant's husband cannot perform heavy physical labor, it has not been established that he has no other transferable skills that would aid him in obtaining a job in Mexico. Additionally, the AAO notes that the applicant's husband is a native of Mexico, who spent his formative years in Mexico, he speaks Spanish, and it has not been established that he has no family ties in Mexico. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment and with access to chiropractic care. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states that the applicant's husband "is now forced to support two (2) households, on one (1) income.... [The applicant] has been unable to find steady employment [in Mexico]." *Id.* The AAO notes that it has not been established that the applicant is unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that 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).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.