U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date: JUL 27 2009

IN RE: [redacted]

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:

[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).

John F. Grissom
Acting 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 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 for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with her U.S. citizen husband.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director,* dated May 31, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband and children will suffer hardship should the applicant be prohibited from entering the United States. *Statement from Counsel on Form I-290B*, dated June 13, 2006.

The record contains statements from counsel; statements from the applicant's husband and mother; a copy of the applicant's marriage certificate; a copy of the applicant's Mexican passport; copies of birth certificates for the applicant's children and mother; copies of photographs of the applicant and her family; a copy of the applicant's husband's naturalization certificate, and; information regarding the applicant's unlawful presence in the United States. 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 was in the United States without a legal immigration status from the expiration of her valid visa, sometime after June 1998 until she departed in or about September 2005. Accordingly, the applicant accrued over seven years of unlawful presence in the United States. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. She was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure.

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 experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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.

On appeal, counsel asserts that the applicant's husband and children will suffer hardship should the applicant be prohibited from entering the United States. *Statement from Counsel on Form I-290B* at 1. Counsel states that the applicant married her husband on January 22, 2003 and that they have U.S. citizen children. *Letter from Counsel*, dated March 16, 2009. Counsel explains that the applicant's husband has been suffering mentally and emotionally since he became separated from the applicant. *Id.* at 1.

Counsel previously indicated that the applicant has strong ties to the United States, and that separation has caused tremendous mental, physical, emotional, and financial tolls on her family. *Prior Letter from Counsel*, dated June 16, 2006.

The applicant's husband stated that he was born in Mexico and he became a U.S. citizen on May 2, 1991. *Statement from the Applicant's Husband*, undated. He stated that they have three U.S. citizen children. *Id.* at 1. The applicant's husband expressed that he misses the applicant and his children greatly. *Id.* He provided that his children speak more English than Spanish, and that it's an "inconvenience" for them in Mexico. *Id.* He stated that his oldest child attends school and that he is losing the opportunity to study in the United States. *Id.* He stated that the applicant and his children are not used to surviving on their own. *Id.*

The applicant's mother stated that they have a close family and that she looks forward to the applicant's return to the United States. *Statement from the Applicant's Mother*, dated June 14, 2006. She indicated that she is a U.S. citizen and that all of her grandchildren are U.S. citizens. *Id.* at 1. She noted that the applicant is her only daughter. *Id.*

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited for entering the United States. Counsel and the applicant's husband assert that the applicant's husband is experiencing hardship due to the applicant's absence and separation from his children. Yet, the applicant has not provided information about her husband's emotional hardship beyond a one-paragraph statement from her husband and brief, general statements from counsel. While the AAO acknowledges that family separation often results in significant emotional hardship, the applicant has not distinguished her husband's hardship from that which is commonly expected when family members are separated due to inadmissibility.

U.S. court decisions have 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.

The record contains references to hardships to the applicant's three U.S. citizen children who are residing with her in Mexico. Direct hardship to an applicant's children is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. 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. In the present case the applicant's husband expressed concern for his children's well-being in Mexico, including the fact that they speak more English than Spanish. Yet, the applicant has not presented evidence to show that her children are encountering unusual challenges such that their hardships are elevating her husband's suffering to extreme hardship.

Counsel noted that the applicant's husband is encountering financial challenges. Yet, the applicant has not stated her husband's income, expenses, or economic resources. Nor has the applicant indicated whether she works in Mexico or whether she faces unusual expenses. Thus, the applicant has not shown that her husband is experiencing financial difficulty as a result of her inadmissibility.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should he remain in the United States without her.

The applicant has not asserted or shown that her husband would experience hardship should he relocate to Mexico to maintain family unity. Accordingly, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to her husband. Section 212(a)(9)(B)(v) of the Act.

The applicant has not shown that her U.S. citizen mother will experience extreme hardship should the applicant remain outside the United States. The applicant's mother expressed that they have a close family and that she wishes for the applicant to return to the United States as a permanent resident. Yet, she did not describe any unusual hardship she will experience if the waiver application is denied. She did not state that she depends on the applicant for economic or emotional needs, or that she would suffer hardship should she join the applicant in Mexico. Counsel did not address hardship to the applicant's mother at any time during the present proceeding. Thus, the applicant has not shown that denial of the present waiver application will cause extreme hardship for her mother.

Based on the foregoing, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to a qualifying relative. Section 212(a)(9)(B)(v) of the Act. 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.