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

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. 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 and child.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated June 2, 2006.

On appeal, counsel for the applicant asserts that the applicant has shown that her husband will experience extreme hardship should the present waiver application be denied. *Statement from Counsel on Form I-290B*, dated January 2, 2008.

The record contains statements from counsel; statements from the applicant's husband; medical documentation for the applicant's child; copies of photographs of the applicant's family members; documentation regarding the applicant's husband's employment and expenses; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's son's birth certificate; a copy of the applicant's marriage 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 entered the United States without inspection in or about April 2001. She remained until she voluntarily departed in August 2005. Accordingly, the applicant accrued over four 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 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 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 for the applicant asserts that the applicant has shown that her husband will experience extreme hardship should the present waiver application be denied. *Statement from Counsel on Form I-290B*, dated January 2, 2008.

The applicant's husband stated that he was born in Mexico in 1967 and he immigrated to the United States in 1985. *Statement from the Applicant's Husband*, dated August 15, 2006. He provided that he has known the applicant for nearly his entire life and they were married on March 23, 2001. *Id.* at 1. He expressed that he and the applicant share a close relationship. *Id.* at 2. He stated that their first son was born on December 22, 2003 and their second son was born on May 22, 2006. *Id.* The applicant's husband stated that if the present waiver application is denied he will not be with his sons for 10 years. *Id.* He explained that he is a truck driver and he lacks the resources to maintain a

household to bring his sons to the United States without the applicant. *Id.* at 3. He indicated that he does not wish to take his children away from the applicant in Mexico. *Id.*

The applicant's husband stated that his younger son has recurring stomach problems and suffers from gastroesophageal disorder. *Id.* He explained that this condition causes him and the applicant significant stress due to concern for their son's health. *Id.*

The applicant's husband stated that separation from the applicant and his children is causing him emotional distress, and that he has lost weight and had insomnia. *Id.* He explained that sleep loss affects his employment as a truck driver. *Id.* He provided that he has visited the applicant and his sons in Mexico twice, but that this period only totals 21 days out of 11 month. *Id.* at 4.

The applicant's husband expressed concern for the applicant acting as a single parent. *Id.* He noted that her parents assist her, but that it is not comparable to having him help her. *Id.* He stated that this situation is placing strain on his marriage because he cannot be with the applicant to help her. *Id.*

The applicant provided information about gastroesophageal disorder in infants which reflects that it sometimes requires medication or it may abate without treatment. In very rare cases it may require surgery. The applicant provided a letter from her son's doctor to show that he is under care for gastroesophageal reflux, yet it does not indicate the severity of the condition or otherwise show the future treatment the applicant's son may require. The record contains documentation to show that the applicant's son has been prescribed medication.

The applicant has not presented any factors of hardship her husband would endure should he relocate to Mexico. As a native of Mexico it is assumed that he is familiar with the Spanish language and Mexican customs, thus he would not face the challenge of adapting to a new language or culture.

The applicant's husband operates a business as a truck driver in the United States. While it is understood that he would be compelled to make significant changes in his business in order to return to Mexico, the applicant has not shown that her husband would be unable to earn sufficient income to meet his and his family's needs there. Nor has the applicant shown that she is unable to work to help support her family.

The applicant presented evidence to show that one of her sons is under care for gastroesophageal reflux. Yet, the record supports that he is obtaining required care in Mexico. The applicant has not shown that her son's condition would cause her husband unusual emotional hardship such that it would elevate her husband's challenges to extreme hardship should they reside in Mexico.

The applicant bears the burden to show that her husband will experience extreme hardship. In the absence of assertions from counsel or the applicant, the AAO may not speculate regarding whether the applicant's husband would endure extreme hardship should he relocate to Mexico. Accordingly, the applicant has not established by a preponderance of the evidence that her husband will experience extreme hardship should he join her and their children in Mexico.

The applicant's husband expressed that he is enduring hardship due to separation from the applicant and his children. The AAO acknowledges that family separation often results in significant emotional hardship. Yet, the applicant has not distinguished her husband's emotional consequences from those which are commonly experienced when family members live apart 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.

As noted above, the record supports that the applicant's son with gastroesophageal reflux is receiving medical care in Mexico, thus the applicant has not shown that his presence in Mexico is negatively affecting his health such to cause additional emotional hardship for the applicant's husband.

The applicant provided financial documentation for her husband that reflects that he presently provides economic support for her, yet he continues to have sufficient funds to meet his needs. While the AAO acknowledges that maintaining two households involves considerable expense, the applicant has not shown that her husband is experiencing significant economic hardship. As noted above, the applicant has not shown that she is unable to work to help meet her needs.

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

All elements of hardship to the applicant's husband have been considered individually and in aggregate. The applicant has not shown by a preponderance of the evidence that denial of the present waiver application "would result in extreme hardship" to her husband. 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.