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

U.S. Citizenship
and Immigration
Services



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FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: JUN 25 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:

SELF-REPRESENTED

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 her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated April 10, 2006.

On appeal, the applicant's husband asserts that he will suffer extreme hardship should the applicant be prohibited from entering the United States. *Statement from the Applicant's Husband on Appeal*, undated.

The record contains statements from the applicant's husband; documentation regarding the applicant's and her husband's sale of real property; copies of the applicant's husband's U.S. and Mexican passports; a copy of the applicant's passport; copies of medical bills for the applicant's husband; a copy of a birth record for the applicant's son; a copy of the applicant's marriage certificate, and; information regarding the applicant's unlawful presence in the United States. The applicant submitted a document in a foreign language without a translation into English. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. 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 with a visitor's visa in or about March 2001 with authorization to remain until September 2001. The applicant did not depart when her status expired, and she remained until December 2002. Accordingly, the applicant accrued over one year 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. 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, the applicant's husband asserts that he will suffer extreme hardship should the applicant be prohibited from entering the United States. *Statement from the Applicant's Husband on Appeal*, undated. He states that he and his U.S. citizen son are both suffering economic, health, mental, and scholastic consequences. *Id.* at 1. He indicates that he is having difficulty as a parent knowing that he cannot help his son. *Id.* He provides that he will start sending all of his income to Mexico "with hope that investment in [his] properties and business will be more prosperous [than] in the U.S." *Id.*

The applicant's husband previously stated that the applicant overstayed her status due to medical reasons for herself and their son. *Prior Statement from the Applicant's Husband*, dated December 15, 2005. He indicated that once they were both well, they departed the United States. *Id.* at 1. He stated that his wife had to remain in the United States due to a complicated pregnancy. *Id.* He indicated that he has had to sell his house and second car to meet his economic needs in the applicant's absence. *Id.*

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 has not asserted or shown that her husband will experience hardship should he join her in Mexico. As a native and citizen of Mexico, it is assumed that the applicant's husband would not face the challenges of adapting to an unfamiliar language or culture there. The applicant's husband noted that he will send all of his income to invest in properties and a business in Mexico, thus it is evident that he has financial resources and a propensity to cultivate an economic connection to the country.

The applicant bears the burden of showing 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. In the absence of clear assertions by the applicant, the AAO may not make assumptions regarding hardship the applicant's husband may face should the waiver application be denied. As the applicant has not presented clear evidence or explanation regarding hardship her husband would face in Mexico, the applicant has not shown that he would experience extreme hardship should he relocate there.

The applicant has not shown that her husband will experience extreme hardship should he remain in the United States without her. The applicant's husband indicated that he is experiencing emotional consequences due to separation from the applicant and his children. Yet, the applicant has not distinguished her husband's emotional hardship from that which is commonly expected when families 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 applicant's husband noted that he and his son have encountered physical problems due to the applicant's inadmissibility. Yet, the applicant has not provided documentation to show that her husband or son have required more than routine medical care. The applicant has not shown that her husband's health status is causing him unusual hardship.

The applicant's husband indicated that he and his son are encountering "scholastic" consequences, yet the applicant has not provided an explanation of any educational detriment to her son or husband.

The applicant's husband referenced his income and investment in a business and real estate in Mexico. The applicant has not provided any documentation relating to her husband's income or financial resources. Nor has the applicant provided an account of her husband's expenses. Thus, the record does not reflect that he is experiencing significant economic hardship due to the applicant's absence.

The record contains references to hardships to the applicant's son. Direct hardship to an applicant's child 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. It is reasonable to expect that a child's emotional state due to separation from a parent will create emotional hardship for a qualifying relative parent. Yet, such situations are common and anticipated results of exclusion and deportation. The applicant has not shown that her son's emotional hardship is raising her husband's challenges to extreme hardship.

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. Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to her husband. 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.