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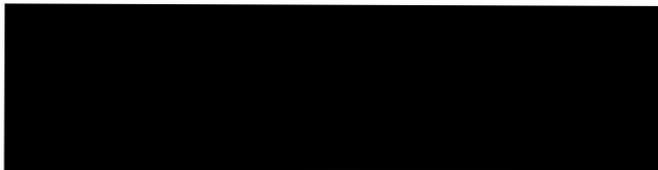
Office: MEXICO CITY (CIUDAD JUAREZ) Date JUN 25 2009

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 daughter.

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 6, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband will suffer extreme hardship should the applicant be prohibited from entering the United States. *Brief from Counsel*, dated January 2, 2008.

The record contains statements from counsel; statements from the applicant, applicant's husband, the applicant's brother-in-law, and the applicant's mother-in-law; copies of birth records for the applicant's two children; a copy of the applicant's marriage certificate; a medical record for the applicant; copies of immigration documents for the applicant's family members in the United States; a psychological evaluation for the applicant's husband; copies of photographs of the applicant's family; copies of tax records for the applicant and her husband, 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 July 2001. She remained until she voluntarily departed in December 2004. Accordingly, the applicant accrued over three 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 asserts that the applicant's husband will suffer extreme hardship should the applicant be prohibited from entering the United States. *Brief from Counsel* at 1. Counsel contends that hardship to the applicant and her children should be considered to the extent that it impacts the applicant's husband. *Id.*

Counsel states that the applicant is a 22-year-old wife and mother, and that she has a close relationship with her husband and their extended family. *Id.* at 2. Counsel provides that the

applicant will experience significant hardship should she and her daughter be separated from her husband. *Id.*

Counsel asserts that the applicant's husband has sought the attention of a psychologist in the United States and Mexico to help him cope with grief, anxiety, and depression resulting from separation from the applicant and their daughter. *Id.* at 3. Counsel states that the applicant's husband's mental and physical health have deteriorated since the applicant's Form I-601 application for a waiver was denied by the district director. *Id.* Counsel asserts that the applicant's husband will continue to experience extreme hardship if the applicant is prohibited from returning to the United States, and if he continues to live apart from his wife and daughter. *Id.*

The applicant's husband stated that he is self-employed in the landscaping business. *Statement from the Applicant's Husband*, dated June 30, 2006. He provided that he met the applicant in Mexico in December 1999 and they married on January 22, 2001. *Id.* at 1. He explained that they decided the applicant should come to the United States due to the fact that she was pregnant and needed medical care. *Id.* He explained that he has suffered depression due to being separated from the applicant and their daughter, and that he sought care with a psychologist in Mexico. *Id.* at 2. He provided that his work performance has suffered and he has lost weight. *Id.* He stated that at times he considers moving to Mexico, but that the applicant and his daughter need him to continue working in the United States to support their family. *Id.* He added that his parents and siblings reside in the United States and that he does not wish to be separated from them. *Id.* He explained that he suffers from emotional hardship due to his daughter's lack of a unified family. *Id.* He indicated that he has headaches that began when he became separated from the applicant and their daughter. *Id.* He stated that he is only able to afford visiting the applicant once every four months. *Id.*

The applicant explained that she entered the United States without inspection to join her husband due to the fact that she was pregnant with nausea and anemia and she risked having a miscarriage. *Statement from the Applicant*, dated July 5, 2006. She indicated that she is experiencing emotional hardship due to seeing her daughter's suffering as a result of being separated from her father. *Id.* at 1. She stated that she had surgery and she has had to deal with recovery without the applicant's continual presence. *Id.*

The applicant's brother-in-law explained that the applicant's husband's family immigrated to the United States in 1994 and that they have seldom returned to Mexico since. *Statement from the Applicant's Brother-in-law*, dated June 26, 2006. He provided that they have a close family and that they have all obtained a legal status in the United States. *Id.* at 1. He indicated that the applicant's separation from her husband has caused her husband and his family significant sadness. *Id.* at 2.

The applicant's mother-in-law stated that the applicant's husband is depressed and withdrawn due to separation from the applicant and their daughter. *Statement from the Applicant's Mother-in-law*, dated June 25, 2006. She stated that the applicant's child has been ill in Mexico, yet she was not ill when she was in the United States. *Id.* at 1.

The applicant submitted a psychological evaluation of her husband conducted by a clinical psychologist, [REDACTED]. Dr. [REDACTED] interviewed the applicant's husband in Spanish on June 24, 2006. *Report from [REDACTED]*, dated June 28, 2006. [REDACTED] stated that the applicant's husband began residing with his parents and four younger brothers when he became separated from the applicant. *Id.* at 1. He noted that the applicant resides with her parents and daughter in Mexico. *Id.* [REDACTED] stated that the applicant's husband reported earning \$600 per week. *Id.* indicated that the applicant's husband has resided in the United States since the age of 15, and that nearly all of his family are in the country with the exception of three maternal aunts. *Id.*

[REDACTED] recounted the history of the applicant's relationship with her husband and their present circumstances. *Id.* at 2-4. [REDACTED] noted that the applicant's husband sought professional help from a psychologist in Mexico in September 2005, and again in early 2006 when the applicant's waiver application was denied. *Id.* at 4. [REDACTED] stated that the applicant's husband scored within the moderate range for clinical depression. *Id.* He added that the applicant's husband has symptoms consistent with depression and anxiety. *Id.* He concluded that, should the applicant's husband continue to be separated from the applicant and their daughter, the applicant's husband may require medical intervention. *Id.* [REDACTED] recommended that the applicant's husband seek professional help to deal with his present psychological trauma. *Id.*

The applicant provided a letter from [REDACTED], a licensed psychologist, who reported that he saw the applicant's husband in Mexico in September 2005 and on March 26, 2006. *Letter from [REDACTED]*, dated July 5, 2006. [REDACTED] recommended that the applicant maintain family unity. *Id.* at 1.

The applicant supplemented the record with evidence that she and her husband had a second child on October 5, 2007.

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is prohibited from entering the United States. Counsel, the applicant's husband, psychologists, and the applicant's husband's family members all attest to the emotional hardship the applicant's husband is experiencing due to separation from the applicant and his daughter. The AAO acknowledges that this emotional hardship is substantial, as shown by the fact that the applicant's husband has sought the care of a mental health professional in Mexico. However, the applicant has not shown that her husband would experience extreme hardship should he relocate to Mexico to join her and their children.

The applicant's husband stated that he has to continue to reside in the United States in order to work and support his family. Yet, while it is reasonable that the applicant's husband may have less lucrative employment or business opportunities in Mexico, the applicant has not shown that she and her husband would be unable to work to meet their needs. It is noted that the applicant and her husband each reside with their respective parents in the United States and Mexico. The applicant has not asserted or shown that she and her husband would be unable to continue to reside with her parents while they adjust to life in Mexico. The applicant has not provided an account of her or her

husband's anticipated expenses or income should they reside in Mexico, thus she has not shown that they would experience significant economic hardship should they reside there.

The applicant's husband has resided in the United States since the age of 15 and the majority of his extended family is here. It is understood that the applicant's husband shares a close relationship with his family members in the United States and he does not wish to be separated from them. However, 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 has not distinguished the emotional hardship her husband would face, should he be separated from his family in the United States, from that which is commonly experienced when family members relocate due to inadmissibility.

The record contains references to hardships to the applicant's daughter. Direct hardship to an applicant's child is not a basis for a waiver under section 212(i)(1) 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 will affect a parent who is a qualifying relative. Yet, in the present matter, the primary identified hardship to the applicant's child consists of emotional consequences due to separation from the applicant's husband. Should the applicant's husband reside in Mexico, his children will not endure separation from him and they may live as a unified immediate family.

It is noted that [redacted] interviewed the applicant's husband in Spanish. Thus, the applicant's husband speaks the native language in Mexico. As a native of Mexico and frequent visitor, it is evident that he is familiar with the customs and culture, thus he would not be faced with the challenge of adapting to an unfamiliar country should he return there.

The record supports that the applicant's husband is experiencing psychological hardship due to separation from the applicant. Yet, both of the psychologists who evaluated him identified the primary source of his hardship as separation from the applicant and their daughter. They each recommended reuniting the applicant's husband with the applicant. They did not posit that the applicant's husband will suffer significant emotional hardship should he reside in Mexico.

The AAO acknowledges that the applicant's husband wishes to reside in the United States with the applicant and his children, and that he will experience emotional hardship should he relocate to

Mexico. Yet, considering all elements of hardship in aggregate, the applicant has not shown that her husband will experience extreme hardship should he join her abroad to maintain family unity.

The record contains references to hardships the applicant's husband will endure should he remain separated from the applicant. The applicant has not asserted or shown that her husband is experiencing significant financial difficulty due to her absence. The applicant has not provided an account of her husband's income or economic requirements in the United States. Thus, she has not established that her husband will experience significant economic hardship should he remain in the United States.

The AAO has considered the report from [REDACTED]. It is noted that the report was generated for the purpose of this proceeding after one interview, thus it does not represent treatment for a mental health disorder or an ongoing relationship with a mental health professional. Yet, the AAO values the opinion of a medical professional and gives due consideration to [REDACTED] conclusions. While the letter from [REDACTED] is brief and does not provide detail about the applicant's husband's treatment or needs, it is sufficient to show that the applicant's husband sought the services of a psychologist on at least two occasions.

The AAO recognizes that the applicant's husband is enduring significant emotional hardship due to separation from the applicant and his children. However, the applicant has not shown that her husband must remain in the United States and prolong their separation. Thus, the applicant has not established 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.