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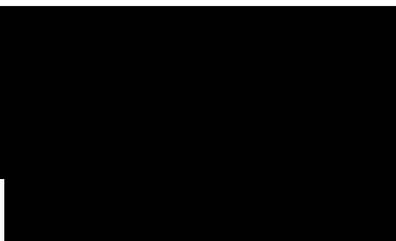
U.S. Citizenship  
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**MAR 03 2009**

FILE:



Office: MEXICO CITY, MEXICO

Date:

(CDJ 2004 697 142)

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:

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico. 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 in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, at 4, dated April 10, 2006.

On appeal, the applicant's spouse states that he needs the applicant to take care of him and their children as he has a disability. *Form I-290B*, dated April 10, 2006.

The record includes, but is not limited to, a statement of disability for the applicant's spouse.<sup>1</sup> The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in 1992 and departed the United States in June 2005. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until June 2005, the time she departed the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of her June 2005 departure.

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.

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<sup>1</sup> The AAO notes the husband's statements in Spanish, but they will not be considered as they do not include a translation, as required by the regulation at 8 C.F.R. § 103.2(b)(3).

....

(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.

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 or the applicant's spouse's children experience is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Mexico or in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Mexico. The applicant's spouse states that he has a disability and his children are U.S. citizens. *Form I-290B*. The record includes a statement of disability which lists the applicant's spouse's length of disability as indefinite and degree of disability as severe. *Statement of Disability*, dated January 16, 2001. The record is not clear as to whether the applicant's spouse's physician verified the statement of disability, what type of disability the applicant's spouse has, what kind of treatment he is receiving or whether he could receive treatment in Mexico. The record does not include birth certificates or other evidence of citizenship for the applicant's spouse's children. The record does not include evidence of the effect on the applicant's spouse of any hardship his children would encounter in Mexico. The record does not include evidence of any other types of hardship that the applicant's spouse would encounter in Mexico. The AAO finds that the record does not include sufficient evidence to establish that the applicant's spouse would experience extreme hardship if he relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that he needs the applicant to take care of him and his children as he has a disability, it is hard to take care of them by himself and he needs her to take care of everything here. *Form I-290B*. As mentioned, the record is not clear as to whether the applicant's spouse's physician verified the statement of disability, what disability the applicant's spouse has or what kind of treatment he is receiving. The record does not include evidence of emotional, financial or any other types of hardship that would be experienced by the

applicant's spouse should he remain in the United States. The AAO finds that the record does not include sufficient evidence that the applicant's spouse would experience extreme hardship if he remained in the United States without the applicant.

U.S. 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, *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.

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.