

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave, N.W. Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H3

FILE: [REDACTED] Office: CIUDAD JUAREZ Date: **MAR 03 2009**
(CDJ 2004 743 536 relates)

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, Ciudad Juarez, 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 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 28, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband will experience extreme hardship if the applicant is prohibited from entering the United States. *Statement from Counsel on Form I-290B*, dated May 11, 2006. Counsel cites decisions from the Ninth Circuit to support that family separation is a primary concern when evaluating hardship to the applicant's husband. *Id.* at 1.

The record contains a statement from counsel on Form I-290B; a statement from the applicant's husband; documentation regarding the transfers of funds from the applicant's husband to her in Mexico; documentation of the applicant's husband's travel to Mexico; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's marriage certificate; and a psychological evaluation for the applicant's husband. It is noted that the applicant submitted two documents in a foreign language without English translations. 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) 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 March 2001. She voluntarily departed on July 11, 2005. Thus, the applicant accrued over four years of unlawful presence in the United States. The applicant applied for a visa to enter the United States as a permanent resident 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. 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's husband will experience extreme hardship if the applicant is prohibited from entering the United States. *Statement from Counsel on Form I-290B* at 1. Counsel asserts that family separation alone is sufficient to warrant a finding of extreme hardship. *Id.* In support of this assertion, counsel cites three decisions of the Ninth Circuit, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), *Salinas-Pastora v. INS*, 112 F.3d 517 (9th Cir. 1997), and *Cerillo-Perez v. INS*, 809 F.2d 1419 (9th Cir. 1987).

The applicant's husband stated that he and the applicant are experiencing financial and family separation difficulties. *Statement from Applicant's Husband*, dated December 27, 2005. He described hardships that the applicant is experiencing in Mexico, and he stated that she is dependent on the economic support that he provides for her and their children. *Id.* at 1. He indicated that he is limited in the amount of funds he can send to her due to his financial responsibilities including a mortgage and bills. *Id.* at 1-2. He explained that the applicant resides in a remote village with her family, and that she has had to discontinue chiropractic treatments she was undergoing in the United States. *Id.* at 2. He explained that the applicant and their children have health insurance through him, but that they are unable to use it in Mexico or obtain adequate healthcare services. *Id.* The applicant's husband stated that the applicant and their five-year-old daughter are unable to receive education in Mexico that is comparable to that available in the United States. *Id.* The applicant's husband indicated that the applicant has an abusive ex-husband who resided in the town where she is staying, and that they have concern that he may attempt to harm the applicant or their children. *Id.* at 3. The applicant's husband explained that he tried to keep their U.S. citizen daughter with him, but that he had to take her to Mexico to be with the applicant due to emotional and physical problems associated with family separation. *Id.* He stated that he has made several trips to Mexico to visit the applicant and their children, but that the expense constitutes economic hardship. *Id.* at 4.

The applicant provided a psychological evaluation of her husband, conducted by [REDACTED] a Clinical Neuropsychologist, with [REDACTED] a Registered Psychological Assistant. [REDACTED] described the applicant's husband's background, including the fact that he came to the United States as a small child and that he has resided here since. *Psychological Evaluation*, dated June 2, 2008. [REDACTED] stated that the applicant's husband is employed as a correctional officer with a prison, and that he wishes to continue. *Id.* at 2. [REDACTED] provided that the applicant's husband has a 12 year-old daughter from a prior marriage who resides with him four days per week. *Id.* [REDACTED] noted that the applicant's husband has concern for the applicant's safety and conditions in Mexico. *Id.* at 3.

[REDACTED] indicated that the applicant's husband reported having \$45,000 in credit card debt and a second mortgage on his home due to the expense of supporting the applicant in Mexico and meeting his own needs in the United States. *Id.*

[REDACTED] stated that the applicant's husband reported that he is experiencing headaches, dizziness, and high blood pressure. *Id.* at 4. [REDACTED] indicated that the applicant's husband reported having hallucinations of a baby crying and a fear of being at home alone. *Id.* at 5. [REDACTED] stated that the applicant's husband claimed to have a chronic pattern of moderate depressive symptoms. *Id.* at 6. [REDACTED] expressed the opinion that "[the applicant's husband's] symptoms of anxiety and depression appear to have arisen from the separation of the [applicant and her husband] and have exacerbated with the length of the absence of the family from [the applicant's husband's] home." *Id.* at 9. [REDACTED] recommended a psychological intervention for the applicant's husband to discuss coping skills in therapy. *Id.*

[REDACTED] noted that "[t]here were no records provided for review." *Id.* at 7.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship should the present waiver application be denied. The applicant's husband expressed that he is experiencing "family hardship" due to being separated from the applicant and their children. However, the applicant has not distinguished her husband's emotional suffering from that which is commonly expected when spouses 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 AAO has examined the report from [REDACTED]. The report is helpful in describing the applicant's husband's background and challenges. Yet, it was created based on a single session, thus it does not represent ongoing treatment for a mental health condition or a continuing relationship with a mental health professional. [REDACTED] noted that "[t]here were no records provided for review," thus the facts to which he refers were gathered orally through discussion with the applicant's husband. Particularly regarding financial facts and prior medical diagnosis, the report from [REDACTED] has little evidentiary value. While the AAO gives due consideration to the opinions of health professionals, [REDACTED] report does not establish that the applicant's husband is experiencing mental health consequences that rise to the level of extreme hardship.

The applicant's husband indicated that he is experiencing economic challenges due to being separated from the applicant. Yet, the applicant has not provided an account of her and her husband's regular expenses such that the AAO can evaluate their needs. The applicant's husband noted that the applicant resides with her family, which suggests she does not require funds for rent or a mortgage in Mexico. The applicant's husband stated that he pays a mortgage, yet the applicant has not submitted evidence of this fact. The applicant's husband indicated that the applicant does not have access to employment in the remote town where she resides, yet the applicant has not shown that she is unable to relocate to a new town where she may work. The record does not contain documentation of the applicant's husband's income. The AAO acknowledges that the applicant's husband has endured expenses associated with travel to Mexico, yet without sufficient documentation to show the applicant's husband's means, the AAO cannot determine that such travel expenses cause an unreasonable burden. Accordingly, the applicant has not provided adequate documentation to show that her husband will experience significant economic hardship should she be prohibited from entering the United States and he remain.

The applicant's husband described hardships to the applicant and their children. Direct hardship to the applicant or the applicant's children is not a basis for a waiver under section 212(i)(1) of the Act. All instances of hardship to qualifying relatives, however, must be considered in the 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 the applicant's and her children's emotional state and general hardship due to separation from the applicant's husband create emotional hardship for him. Yet, the applicant has not shown that she or her children are experiencing hardship that raises her husband's challenges to extreme hardship.

Based on the foregoing, the applicant has not shown that her husband will experience extreme hardship should she be prohibited from entering the United States and he remain.

The applicant has not shown that her husband would experience extreme hardship should he relocate to Mexico. The applicant's husband works in the United States and he indicated that he provides the economic support for his family. It is reasonable that he would be compelled to relinquish his employment should he relocate to Mexico. Yet, the applicant has not asserted or shown that her husband would be unable to secure employment in Mexico that is sufficient to meet his needs. The applicant provided a statement from her husband in the Spanish language which suggests that he speaks and writes in Spanish. The applicant's husband was born in Mexico. Therefore, the record suggests that the applicant's husband would not face the challenges of adapting to an unfamiliar language or culture should he return there. Based on the foregoing, the applicant has not shown that her husband would experience extreme hardship should he join her in Mexico to maintain family unity.

Counsel asserts that family separation alone is sufficient to warrant a finding of extreme hardship, citing three decisions of the Ninth Circuit, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), *Salinas-Pastora v. INS*, 112 F.3d 517 (9th Cir. 1997), and *Cerillo-Perez v. INS*, 809 F.2d 1419 (9th Cir. 1987). While none of these decisions addressed a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, the present matter arises within the jurisdiction of the Ninth Circuit and the AAO finds the matters instructive regarding the significance of family separation when evaluating extreme hardship. Yet, the mere fact that the denial of an application for a waiver may result in family separation is not sufficient to warrant approval. The applicant must distinguish the hardship to her U.S. citizen husband from that which would typically occur when families are separated due to inadmissibility. As discussed above, the applicant has not shown that her husband's hardship will be greater than that ordinarily expected. The applicant has not established other factors of hardship to her husband that, when considered in the aggregate, warrant a finding of extreme hardship. Further, the applicant has not shown that denial of the present waiver application will result in family separation, as she has not shown that her husband would experience extreme hardship should he relocate to Mexico to maintain family unity.

The elements of hardship presented by the applicant have been considered individually and in the aggregate. Based on the foregoing, 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.