

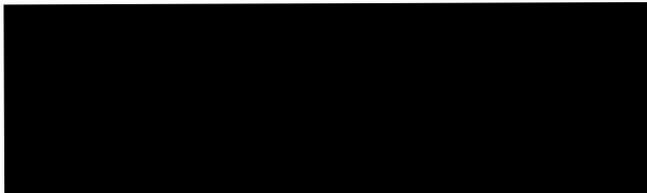
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



H3

FILE:

[Redacted]
(CDJ 2004 731 239)

Office: MEXICO CITY (CIUDAD JUAREZ) Date: **MAY 04 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:

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 June 26, 2006.

On appeal, the applicant's husband asserts that he is experiencing hardship due to separation from the applicant. *Statement from the Applicant's Husband on Form I-290B*, dated June 29, 2006.

The record contains statements from the applicant's husband; a copy of birth certificates for the applicant's children; a copy of the applicant's marriage certificate; a copy of the applicant's husband's birth certificate, and; documentation regarding the refusal of the applicant's immigrant visa, including a finding that she resided unlawfully in the United States for more than one year. 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.

In the present matter, the district director noted in his decision that the applicant accrued unlawful presence from August 2001 until May 2005 when she voluntarily departed. Thus, the district director found that the applicant accrued over one year of unlawful presence. The district director deemed the applicant 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.

Upon review, the record supports that the applicant resided in the United States from February 2000 until February 2004, and from July 2004 until April 2005. *Form DS-230*, dated July 13, 2005. The applicant represented on Form DS-230 that she resided in Pomona, California during those periods pursuant to a B-1/B-2/Border Crossing Card. *Id.* The record does not support that the applicant held a legal immigration status for the entirety of her stays in the United States, as Mexican nationals were only permitted a maximum of 72 hours in the United States pursuant to entry with a border crossing card as of the dates the applicant's wife entered. *See Fed. Reg. Vol. 69 No. 156 (August 13, 2004).* Thus, the record shows by a preponderance of the evidence that the applicant accrued over one year of unlawful presence in the United States.¹ She now seeks readmission as an immigrant pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. Accordingly, the applicant was properly deemed inadmissible under section 212(a)(9)(B)(II) of the Act. 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

¹ The record contains inconsistent references to the applicant's periods of stay in the United States. The district director indicated that the applicant was in the United States without a lawful status from August 2001 until May 2005. On Form I-601 the applicant stated that she was in the United States from July 2001 until December 2002, and from July 2005 to May 2005. As referenced above, the applicant represented on Form DS-230 that she was in the United States from February 2000 until February 2004, and from July 2004 until April 2005. While each of these date ranges are inconsistent, they all reflect that the applicant accrued over one year of continuous unlawful presence in the United States.

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 is experiencing hardship due to separation from the applicant and their two children. *Statement from the Applicant's Husband on Form I-290B*, dated June 29, 2006. The applicant's husband provides that he has spent too much money to visit the applicant and his children in Mexico, and that he is unable to work in peace due to his family's absence. *Id.* at 1. He states that he will lose his job if he continues to request time off to visit the applicant and his children. *Id.* The applicant's husband indicated that he is having sleep problems. *Statement from the Applicant's Husband*, dated January 17, 2007. He provided that he does not wish for his daughter to go to school in Mexico, as she deserves to reside in the United States. *Prior Statement from the Applicant's Husband*, dated February 26, 2005.

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's husband expressed that he will experience emotional hardship if the applicant is prohibited from entering the United States. Yet, the applicant has not distinguished her husband's emotional hardship from that which is commonly experienced when spouses are separated due to inadmissibility. While the AAO acknowledges that family separation can be emotionally difficult, the applicant's husband has not described circumstances that show that he is suffering unusual emotional consequences.

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 suggested that he will experience economic consequences should the applicant be prohibited from entering the United States, largely due to the cost of traveling to Mexico and issues of managing his relationship with his employer while taking leave. Yet, the applicant has not presented any documentation to show her husband's employment, his level of compensation, his expenses, or his other financial resources, if applicable. Thus, the AAO lacks sufficient documentation to determine the economic impact the applicant's absence will have on her husband.

The applicant's husband noted that his daughter will be negatively affected if she is unable to attend school in the United States. Direct hardship to an applicant or an applicant's children 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. However, in the present matter the applicant has not provided sufficient explanation or documentation to show that hardship to her children is elevating her husband's hardship 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 she be prohibited from entering the United States and her remain.

The applicant has not asserted or shown that her husband would experience extreme hardship should he relocate to Mexico to maintain family unity. Accordingly, 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.