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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APR 0 2 2010

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

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).

Perry Rhew
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 reside in the United States with her U.S. citizen husband and son.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director,* dated November 14, 2006.

On appeal, the applicant's husband states that he is suffering hardship due to the applicant's absence. *Statement from the Applicant's Husband*, dated November 30, 2006.

The record contains statements from the applicant's husband, the applicant's son, and the applicant's mother-in-law; a copy of the applicant's son's permanent resident card; copies of medical documentation for the applicant's husband and mother-in-law; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's marriage certificate, and; documentation 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) 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 May 1999. She remained until or about October 2005. Accordingly, the applicant accrued over six 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)(i)(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 to a qualifying relative. 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 states that he is suffering hardship due to the applicant's absence. *Statement from the Applicant's Husband* at 1. He explains that he needs the applicant's help, and he is feeling lonely and depressed without her. *Id.* The applicant's husband asserts that his mother is also experiencing hardship due to the applicant's absence, as the applicant cares for her when she is ill. *Id.*

The applicant's son states that he will suffer hardship if the applicant is not permitted to return to the United States. *Statement from the Applicant's Son*, dated November 30, 2006. He describes his history with the applicant and the circumstances of their residence in the United States. *Id.* at 1.

The applicant's mother-in-law states that she has resided in a household with the applicant and the applicant's husband. *Statement from the Applicant's Mother-in-Law*, dated November 30, 2006. She provides that the applicant has helped care for her, and that she will experience hardship if the applicant is not permitted to return to the United States. *Id.* at 1.

The applicant provides a letter from her mother-in-law's physician, [redacted] in which [redacted] reports that she has hypertension, "DJD," Hypothyroidism, and Osteoporosis. *Letter from* [redacted], dated November 30, 2006.

The applicant provides a letter from her husband's medical care provider that states that he is treated for Hyperlipidemia, Hypertension, and situational anxiety. *Letter from the Office of* [redacted], dated November 24, 2006. The applicant submits records of her husband's ongoing medical care, most of which are illegible.

Upon review, the applicant has not established that a qualifying relative will suffer extreme hardship if she is prohibited from entering the United States. The record contains references to hardships experienced by the applicant's mother-in-law and son. Direct hardship to an applicant's son or mother-in-law 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. The AAO has examined the letters from the applicant's son and mother-in-law. While it is evident that the applicant's son and mother-in-law will experience hardship should the present application for a waiver be denied, the record does not show that their hardship will contribute to her husband's challenges.

On the Form I-601 application, the applicant indicated that her parents are lawful permanent residents of the United States. However, she has not provided evidence to show that they are lawful permanent residents, and she has not asserted that they will experience hardship should she be prohibited from residing in the United States at the present time. Thus, the applicant has not shown that her parents will suffer extreme hardship, or that any hardship they endure may serve as a basis for a waiver under section 212(a)(9)(B)(v) of the Act.

The applicant has not established that her U.S. citizen 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 extreme hardship should he join her in Mexico. The applicant's husband expressed that he is enduring depression and emotional difficulty due to separation from the applicant, yet he would not face such separation in Mexico. The record shows that the applicant's husband has a history of medical treatment in the United States, and his physician's office indicated that he is being treated for Hyperlipidemia, Hypertension, and situational anxiety. Yet, with the exception of the brief letter from the office of [redacted] the medical records provided for the applicant's husband are largely illegible. The brief medical letter does not describe the applicant's husband's symptoms, explain the effect they have on his ability to perform common tasks, or establish that he cannot obtain adequate treatment in Mexico. As a native and citizen of Mexico, the applicant's husband would not be compelled to adapt to an unfamiliar language or culture should he return there.

Based on the foregoing, the applicant has not shown that her husband will suffer extreme hardship should he join her in Mexico for the remainder of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant also has not shown that her husband will suffer extreme hardship should he remain in the United States without her. The applicant's husband asserts that he is experiencing emotional hardship due to separation from the applicant. The AAO has carefully examined the medical records for the applicant's husband, including a note that he visited his physician on November 24, 2006 in part due to depression and in part to obtain a letter for immigration purposes. *Husband's Progress Note*, dated November 24, 2006. The letter from the office of [redacted] notes that the applicant's husband is under treatment in part for situational anxiety. However, the medical documentation for the applicant's husband does not describe his symptoms, indicate that his conditions are related to the applicant's absence, or posit that the applicant's presence will have an impact on his treatment. The applicant has not asserted or shown that her husband requires her assistance, or that he will suffer emotional or physical hardship in her absence that can be distinguished from the common challenges when spouses reside apart due to inadmissibility.

Federal court and administrative 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 has not indicated that her husband will endure other elements of hardship should he remain in the United States without her. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will suffer extreme hardship should he remain in the United States or join her in Mexico for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. 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 regarding a 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.