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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

H/S



AUG 18 2010

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date:  
(CDJ 2004 779 027 relates)

IN RE: Applicant: [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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in cursive script that reads "Perry Rhew".

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.

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 November 7, 2007.

On appeal, the applicant's husband asserts that he is experiencing hardship due to being separated from the applicant. *Statement from the Applicant's Husband*, dated November 20, 2007.

The record contains, in pertinent part, statements from the applicant's husband; a copy of the applicant's marriage certificate, and; information regarding the applicant's prior stay in the United States without a lawful immigration status. 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 in or about February 1998 using a border crosser card. In an interview with a consular officer she stated that she was admitted for a six-month period but that she remained until approximately October 2002. Thus, the applicant accrued unlawful presence from approximately August 1998 until October 2002, totaling over four years. 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 asserts that he is experiencing hardship due to being separated from the applicant. *Statement from the Applicant's Husband* at 1. He states that the applicant has remained in Mexico since she returned in 2002, and that he has turned to working near the border in order to be close to her. *Id.* He explains that he has declined higher paying jobs in New Jersey and Detroit in order to remain near the applicant until her immigration problems are resolved. *Id.*

The applicant's husband previously explained that separation is causing him and the applicant emotional hardship, and that the applicant's anxiety affects him as well. *Prior Statement from the Applicant's Husband*, dated August 19, 2006. He stated that the applicant has lost weight and he worries about her health. *Id.* at 1. He noted that it is difficult for him to take leave from work each month to visit the applicant. *Id.* He indicated that his expenses have doubled due to the need to support himself in the United States and the applicant in Mexico. *First Statement from the Applicant's Husband*, dated August 2, 2006. He provided that he sends the applicant \$100 to \$200 each week. *Id.* at 1. He stated that he has had to sell property and deplete his savings in order to

fund visiting the applicant. *Id.* He added that he wishes to have children born in the United States, but that he is unable to realize this goal while the applicant is prohibited from returning. *Id.*

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is prohibited from entering the United States for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant and her husband have not asserted that the applicant's husband will suffer hardship should he join her in Mexico. In the absence of clear assertions from the applicant, the AAO may not speculate as to the hardship the applicant's husband may endure. 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. Thus, as the applicant has not stated that her husband will face challenges should he relocate to Mexico, she has not shown that such relocation will result in extreme hardship.

The applicant has not established that her husband will suffer extreme hardship should he remain in the United States for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant's husband expressed that he is enduring economic difficulty due to the applicant's absence. However, the applicant has not submitted any documentation of her husband's expenses or income. Nor has the applicant asserted or shown that she is unable to engage in employment in Mexico to meet her own expenses. Thus, the AAO is unable to conclude that her husband lacks financial resources that are sufficient to meet his needs.

The applicant's husband states that he is enduring emotional difficulty due to separation from the applicant. The AAO has carefully examined the statements from the applicant's husband, and it is evident that the separation of spouses often results in significant psychological suffering. However, the applicant has not sufficiently distinguished her husband's emotional hardship from that which is commonly experienced 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 (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's husband indicated that he wishes to have children born in the United States. The AAO acknowledges that the applicant's husband wishes to have a family with children who are citizens of the United States. Yet, as the applicant has not shown that her husband would experience extreme hardship in Mexico, she has not established that denial of the present waiver application inhibits their ability to have children outside the United States, and then return at the conclusion of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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 residing in the United States at the present time and he remain. 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.

As noted above, 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.