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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

HG

[REDACTED]

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **AUG 20 2010**

IN RE: Applicant: [REDACTED]

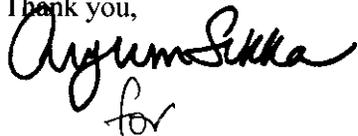
APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

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).

Thank you,

for
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 record reflects that 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 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. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband and child in the United States.

The district director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the District Director*, dated December 3, 2007.

The record contains, *inter alia*: a marriage certificate of the applicant and her husband, Mr. [REDACTED], indicating they were married on November 7, 2003; a copy of the couple's U.S. citizen son's birth certificate indicating he was born on May 18, 2004; a letter and a declaration from Mr. [REDACTED], a psychological evaluation for Mr. [REDACTED]; copies of the applicant's son's prescriptions; copies of money orders from Mr. [REDACTED] to the applicant; copies of phone bills, the couple's bank account statements, and other financial documents; letters of support; copies of pictures of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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 this case, the district director found, and the applicant does not contest, that she entered the United States in November 2003 without inspection and remained until February 2007. The applicant accrued unlawful presence of over three years. She now seeks admission within ten years of her February 2007 departure. Accordingly, she 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 one year or more and seeking admission to the United States within ten years of her last departure.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, the record reflects that the applicant wed [REDACTED], a native of Mexico and U.S. citizen, on November 7, 2003. A birth certificate of the couple's U.S. citizen son indicates he was born on May 18, 2004. The applicant's spouse is a qualifying relative for purposes of a section 212(a)(9)(B)(v) waiver. Hardship to the applicant's child will be considered only insofar as it results in hardship to the applicant's spouse.

The applicant's husband, Mr. [REDACTED], states that he and his wife deeply regret her unlawful entry into the United States. He contends that she entered the United States without inspection when she was three months pregnant with their son. Mr. [REDACTED] states that they gave serious consideration to the fact that hospitals in the United States are preferable to those in Mexico. In addition, Mr. [REDACTED] states that he has

worked at the same job for almost twenty years. He contends he has lived a simple life in the United States working and supporting his mother in Mexico. Mr. [REDACTED] states that his life changed profoundly after he married his wife and they started a family. He states that in September 2005, they “were jumped by [their] home [and that he] thank[s] God that only [their] money was taken and [they] were uninjured.” In addition, he states that his wife had an allergic reaction to a bee sting and that, another time, she was severely ill. He states that being with his wife has “awakened” him and that he “can only think about regaining [his] life with [his] wife and son and little else.” According to Mr. [REDACTED], he cannot return to living the simple and solitary life he lived prior to marrying his wife. Furthermore, Mr. [REDACTED] states that he is worried about his son’s health in Mexico, that his son did not have so many health problems in the United States, but “seems to have many more problems while he stays . . . in Mexico.” He claims that “it terrifies [him] to think of . . . giving up the life that [he has] made in the United States and returning to Mexico with no education or special skills for life there.” According to Mr. [REDACTED], he would not be able to find a good job in Mexico because he does not have any “special education.” *Letter from [REDACTED]*, dated January 21, 2008; *Declaration of [REDACTED]* dated January 25, 2007.

A psychological evaluation for Mr. [REDACTED] in the record states that he scored in the “severe range” for depression and in the “moderate range” for anxiety. According to the psychologist, Mr. [REDACTED] has become excessively nervous, depressed, withdrawn, and antisocial since the applicant departed the United States. The psychologist states that Mr. [REDACTED] has become completely isolated from friends and family. He purportedly goes to work, then quickly returns home and stays there alone thinking about his family, without interacting with others, watching television, or listening to the radio. The psychologist states that Mr. [REDACTED] is “becoming rapidly disconnected from others and is withdrawing into a deep state of depression and disconnection from the world around him.” In addition, the psychologist states that Mr. [REDACTED] mother passed away four years ago, leaving him depressed, lethargic, and still struggling with this loss. The psychologist contends that the depression Mr. [REDACTED] felt as a result of the loss of his mother has been compounded and exacerbated by the separation from his wife and son. Furthermore, the psychologist claims that Mr. [REDACTED] must continue working in the United States in order to support his wife and son in Mexico and that “[f]inding work in Mexico at 41 and with a 6th grade level of education seems highly improbable.” In addition, according to the psychologist, Mr. [REDACTED] constantly worries about the safety of his wife and son in Mexico. The psychologist concludes that Mr. [REDACTED] has major depressive disorder and that if the applicant is not permitted to return to the United States, Mr. [REDACTED] will face “eventual financial and emotional devastation.” *Adult Evaluation Report by Adriana Camargo-Fernandez*, dated January 18, 2008.

The record contains letters from Mr. [REDACTED] friends stating that they have noticed Mr. [REDACTED] depression since the applicant and his son departed the United States. *Letter from Armando Barron*, dated December 16, 2007 (stating that Mr. [REDACTED] is “sad and depressed due [to] his separation from his family that he loves so much,” and noting a “big change in [his] character”); *Letter from [REDACTED]* dated December 18, 2007 (stating that Mr. [REDACTED] “has been more and more withdrawn” since the applicant and their son departed the country). The record also contains receipts showing that Mr. [REDACTED] sent money orders to his wife in Mexico.

After a careful review of the record, it is not evident that the applicant's husband has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that Mr. [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, if Mr. [REDACTED] decides to remain in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of [REDACTED]*, 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

Regarding the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record is based on a single interview the psychologist conducted with Mr. [REDACTED] on January 18, 2008. The record thus fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. In addition, there is no evidence that there is a history of treatment for depression or anxiety. Rather, the psychologist indicates that the applicant's depression and anxiety are related to his wife's immigration case, but does not comment on whether his symptoms might lessen if he relocated to Mexico with his wife and child, and the applicant does not discuss the availability of mental health care in Mexico. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby diminishing the evaluation's value to a determination of extreme hardship.

Regarding the financial hardship claim, although the record contains a copy of Mr. [REDACTED] pay stub, copies of phone bills, and receipts showing he financially supports his wife in Mexico, there is no evidence addressing Mr. [REDACTED] regular, monthly expenses such as rent or mortgage. In addition, according to the applicant's Biographic Information form (Form G-325A), she was a homemaker the entire time she lived in the United States and, therefore, there is no evidence showing that she helped financially support the family while she was in the country. Without more detailed information, the AAO is not in the position to attribute any financial difficulties Mr. [REDACTED] may be experiencing to the applicant's inadmissibility.

Furthermore, Mr. [REDACTED] claim that he cannot move back to Mexico, where he was born, because he does not want to give up the life he has in the United States and fears he would be unable to find a good job there does not rise to the level of extreme hardship based on the record. The record shows that Mr. [REDACTED] is currently forty-three years old and he does not claim that he does not speak Spanish or that he

has any physical or mental health issues that would make his transition to moving back to Mexico any more difficult than would normally be expected. Even assuming Mr. [REDACTED] would experience some financial hardship by moving back to Mexico, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

To the extent Mr. [REDACTED] contends his son has had more health problems in Mexico than he had in the United States, Mr. [REDACTED] fails to elaborate regarding what types of health issues his son has purportedly experienced. There is no letter from any health care professional addressing the diagnosis, prognosis, treatment, or severity of any health problems Mr. [REDACTED]'s son may have experienced. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).¹

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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, 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.

¹ The AAO notes that although the record contains copies of the applicant's son's prescriptions as well as a medical certification, they are written in Spanish and have not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Consequently, these documents cannot be considered.