

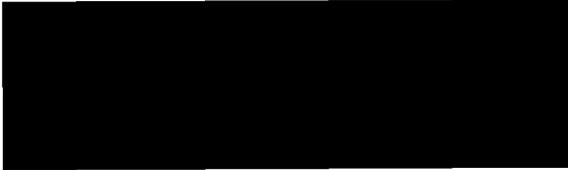
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



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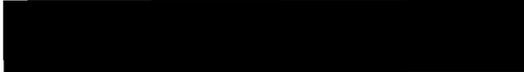


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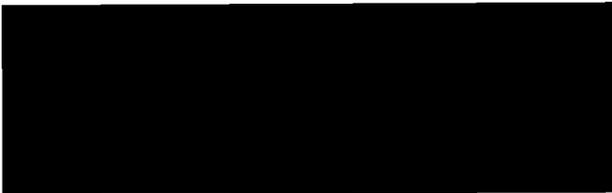
JAN 22 2010

FILE:  Office: MEXICO CITY (CIUDAD JUAREZ) Date:

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)

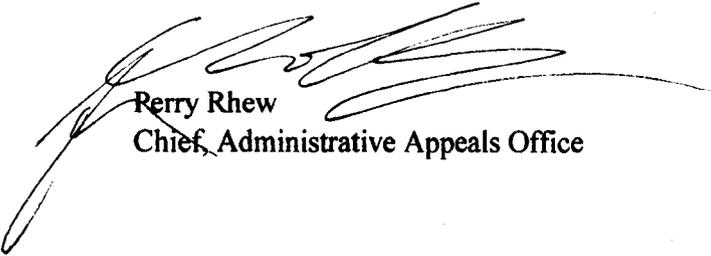
ON BEHALF OF APPLICANT:



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.

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 October 17, 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 November 15, 2006.

The record contains statements from counsel, the applicant's church, and the applicant's husband; copies of documents relating to the applicant's husband's health; copies of birth records for the applicant and her husband; a copy of the applicant's marriage license, 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 applicant indicated on Form I-601 that she was in the United States without a legal immigration status from July 1995 to August 2003. Accordingly, she accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until she departed in August 2003, totaling over six years. She now seeks admission as an immigrant pursuant to her marriage to a United States citizen. 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, counsel 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 states that the applicant's husband is suffering symptoms including worsening psoriasis, diabetes, and depression. *Id.* Counsel contends that the applicant received erroneous advice from the United States Immigration and Naturalization Service (now United States Citizenship and Immigration Services), a private attorney, and an advocate regarding her departure from the United States. *Id.*

The applicant's husband reported that he has experienced worsening health problems since the applicant departed the United States. *Statement from the Applicant's Husband*, dated November 18, 2005. He stated that the applicant prepared nutritional food for him to keep his diabetes under control, but that he has been buying fast food in the applicant's absence which is bad for his health.

Id. at 1. He noted that his sugar levels are high. *Id.* He explained that he has psoriasis which is triggered by stress. *Id.* He noted that he takes medication for his diabetes, kidneys, and skin condition. *Id.*

The applicant's husband stated that he is enduring economic hardship due to the applicant's absence. *Id.* He provided that he is incurring expenses due to traveling to Mexico and sending funds to the applicant. *Id.* He stated that he fears he will lose their house and his employment if their circumstances do not change. *Id.*

The applicant's husband expressed that he loves the applicant and he wishes to be reunited with her. *Id.*

The applicant submits a brief letter from her husband's physician, Dr. [REDACTED] who attests that the applicant's husband has diabetes and he is under stress which is aggravating his psoriasis. *Letter from Dr.* [REDACTED] dated November 13, 2006. Dr. [REDACTED] contends that the applicant's husband is unable to control his stress and that he would benefit from the applicant's presence. *Id.* at 1.

The applicant submitted numerous prescriptions for her husband as evidence of his health problems.

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 has not asserted or shown that her husband will experience extreme hardship should he relocate to Mexico to maintain family unity. In the absence of clear assertions from the applicant, the AAO may not speculate as to hardships her husband may face should he relocate abroad. In proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO observes that the applicant's husband suffers from diabetes and psoriasis, yet Dr. [REDACTED] stated her opinion that the applicant's husband's health would benefit from the applicant's presence. The applicant's husband could receive the benefits of residence with the applicant should he join her in Mexico. The applicant has not asserted or shown that her husband would be unable to obtain medical care for diabetes and psoriasis in Mexico. Based on the foregoing, the applicant has not shown that her husband would experience extreme hardship should he join her in Mexico.

As noted above, the AAO acknowledges that the applicant's husband is suffering from diabetes and psoriasis. Dr. [REDACTED] indicated that the applicant's husband is unable to control his severe psoriasis due to stress, and that he needs the applicant. Thus, the record contains an opinion from a medical professional that the applicant's husband's health will continue to be negatively affected should he remain in the United States without the applicant. However, it is noted that the letter from the applicant's husband's physician is brief and does not discuss how the applicant's husband's health affects his ability to care for himself or perform common daily tasks. As the applicant's husband indicates that he works, it is evident that he is capable of engaging in employment.

The applicant's husband indicated that he is enduring financial hardship due to the applicant's absence. However, the applicant has not stated or documented her husband's income, or provided sufficient explanation or evidence of his regular household expenses. The applicant's husband noted that he transfers funds to the applicant in Mexico, yet the applicant has not asserted or shown that she is unable to work to meet her needs. Without an indication of the applicant's or her husband's income or complete financial information, the AAO is unable to conclude that the applicant's husband is suffering economic challenges that rise to the level of extreme hardship.

The applicant's husband expressed that he is suffering emotional hardship due to separation from the applicant. The AAO acknowledges that the separation of spouses often results in significant psychological hardship. Yet, the applicant has not sufficiently distinguished her husband's emotional hardship from that which commonly occurs when spouses are separated 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 AAO has considered all elements of hardship to the applicant's husband in aggregate, should he remain in the United States without the applicant. The AAO has given particular attention to the applicant's husband's health and the evidence that he is suffering from diabetes and psoriasis. However, the applicant has not submitted sufficient documentation or explanation to show by a preponderance of the evidence that her absence is exacerbating her husband's health problems to the level of extreme hardship. As discussed above, the applicant has not shown that the other elements of hardship to her husband can be distinguished from those commonly expected when spouses reside apart due to inadmissibility. Based on the foregoing, the applicant has not shown that her husband will experience extreme hardship should he remain in the United States without her.

Counsel contends that the applicant received erroneous advice from a U.S. immigration officer, a private attorney, and an advocate regarding her departure from the United States. However, the applicant has not provided any specific information or evidence to establish a claim of ineffective assistance of counsel or to otherwise show that she has been prejudiced by the actions of U.S. immigration officers. Thus, counsel's assertion is not persuasive.

Accordingly, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver of inadmissibility under 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.