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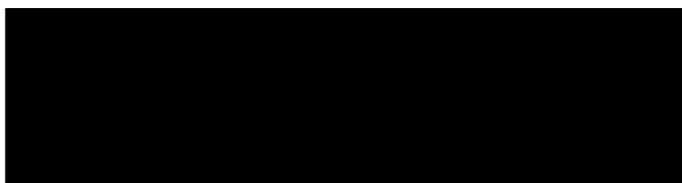
U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date:

IN RE: Applicant: [REDACTED]

JUL 26 2010

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,

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 children.

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 September 24, 2007.

On appeal, the applicant's husband states that he will endure hardship if the applicant is not permitted to reside in the United States. *Statement from the Applicant's Husband*, dated October 22, 2007.

The record contains statements from the applicant's husband; copies of receipts for transfers of funds from the applicant's husband to the applicant in Mexico, and; documentation of the applicant's entry to the United States in B-2 nonimmigrant status pursuant to a border crosser card. 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 on April 15, 2002 the applicant entered the United States in B-2 nonimmigrant status, with authorization to remain until October 15, 2002. The district director stated that the applicant entered without inspection, yet as correctly noted by the applicant's husband, the applicant entered lawfully pursuant to a border crosser card. She did not depart the United States until or about July 2006. Accordingly, she accrued unlawful presence from the date her B-2 status expired, on October 16, 2002, until she departed in July 2006. This period totals over three 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 states that he has resided in the United States since the age of 16. *Statement from the Applicant's Husband* at 1. He provides that he and the applicant have four U.S. citizen children, ages 11, eight, two, and 10 months as of October 22, 2007, and that he has always dreamed of raising his family in the United States. *Id.* He indicates that his older children were in the top of their elementary school class in Michigan, but that they are struggling to adapt to a new school system. *Id.* He expresses concern that his children will be unable to realize their goals should they not reside in the United States. *Id.*

The applicant's husband states that he endures emotional and mental stress due to worrying about his family's safety in Mexico, as they reside in a small town near [REDACTED] where there are violent outbreaks, crime, and no police surveillance. *Id.* at 1-2.

The applicant's husband provides that he travels to Mexico often to be with his family, and that it is affecting him financially. *Id.* at 2. He indicates that an accident caused damage to his vehicle in Mexico and he has been unable to obtain assistance from authorities there. *Id.* He states that his family had healthcare in the United States through his employment, but that now he must pay for their medical expenses out-of-pocket. *Id.* He explains that he must meet his economic needs in the United States while supporting the applicant and his children in Mexico. *Id.*

The applicant's husband expresses that he needs the applicant's support emotionally, morally, physically, financially, and mentally. *Id.*

The applicant's husband indicates that he would have difficulty should he bring his children to the United States, as he would be unable to afford daycare with his income, and his children would miss the applicant. *Id.* He notes that he has no family who could assist him. *Id.*

The applicant's husband provides that he cannot see himself working in Mexico at a very low wage while trying to support his family. *Id.*

Upon review, the applicant has not shown that her husband will endure extreme hardship should she be compelled to reside outside the United States for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant's husband references his and the applicant's four U.S. citizen children, and he describes hardships they will endure and explains how he will be emotionally affected as a result. However, the applicant has not provided any documentation to support that she and her husband have children, such as their birth certificates, school records, medical records, or other documentation. Without clear documentation that she and her husband have children, the record does not show by a preponderance of the evidence that her husband will be impacted by his claimed children's difficulty or his need to care for them.

The applicant's husband suggests that he will endure hardship should he relocate to Mexico. He asserts that the applicant is residing in an area of Mexico where conditions are difficult. However, the applicant has not established that she and her husband would be compelled to reside in her current location. The applicant's husband indicated that he visits the applicant often in Mexico, but with the exception of an accident that damaged his vehicle, he does not describe any difficulty he experienced there. Nor has the applicant provided any reports on conditions in the area in which she and her husband would likely reside.

The applicant's husband noted that he has resided in the United States for a lengthy duration, since the age of 16, which suggests that he will endure emotional hardship should he reside in Mexico. He further indicates that he would face low wages and financial difficulty in Mexico. However, the applicant has not sufficiently distinguished her husband's challenges in Mexico from those commonly faced when an individual resides abroad due to the inadmissibility of a spouse. 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.

It is noted that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for 10 years from the date of her last departure, until July 2016. The AAO acknowledges that residing outside the United States for approximately six years would create difficulty for the applicant’s husband. Yet, the applicant and her family may return to the United States as a unified family at the conclusion of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant’s husband states that he is enduring economic hardship due to being separated from the applicant. However, the applicant has not provided any employment or financial documentation for her husband or herself. Thus, the AAO lacks adequate information or documentation in order to conclude that the applicant’s husband will endure significant economic challenges should he continue to reside apart from the applicant for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant’s husband expresses that he needs the applicant’s support emotionally, morally, physically, financially, and mentally. While the AAO acknowledges that family separation often results in significant emotional hardship, the applicant has not distinguished her husband’s psychological challenges from those commonly experienced when spouses reside apart due to inadmissibility.

All stated elements of hardship to the applicant’s husband have been considered in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will suffer extreme hardship should he relocate to Mexico or remain in the United States for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. Thus, the applicant has not shown that denial of the present waiver application “would result in extreme hardship” to her husband, as required for a waiver 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.

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.