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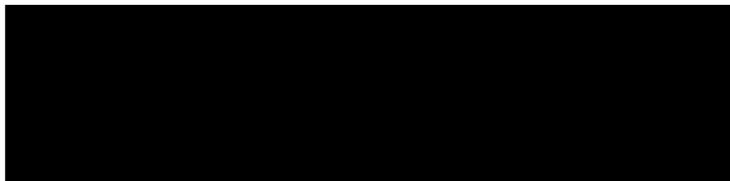
U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



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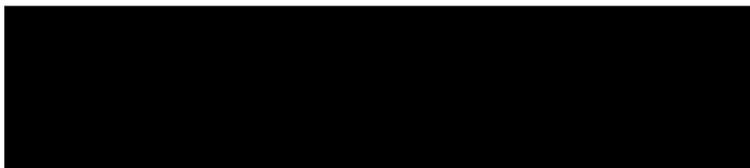


FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **JUL 26 2010**

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)

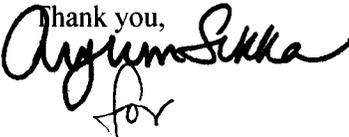
ON BEHALF OF APPLICANT:



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,

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 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 December 10, 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 January 24, 2008.

The record contains statements from the applicant's husband and father-in-law; documentation regarding the applicant's children's enrollment in a pre-kindergarten program and their medical care; copies of birth certificates for the applicant's children; a copy of a deed and related documents regarding the applicant's and her husband's ownership of a home, and; copies of photographs of the applicant and her family. The applicant further provided documents in a foreign language, purported to be copies of prescriptions for medications for her son. Because the applicant failed to submit translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. With the exception of the untranslated documents, the entire record was reviewed and considered in rendering this decision.

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 District Director determined that in or about June 2000 the applicant entered the United States without inspection, and she remained until at least April 2004.¹ Accordingly, the applicant accrued over three 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 separation from the applicant has affected his mental and physical health. *Statement from the Applicant's Husband*, dated January 24, 2008. He explains that he is not eating or sleeping well. *Id.* at 1 He indicates that he is seeing a therapist. *Id.* at 4.

¹ The district director indicated that the applicant departed the United States in April 2004, yet information from the U.S. Consulate in Ciudad Juarez, Mexico provides that the applicant testified under oath that she resided in the United States without a legal status until February 2007. Whether the applicant departed in April 2004 or February 2007, she accrued over one year of unlawful presence in the United States.

The applicant's husband states that he is enduring a financial burden due to the need to support the applicant's household in Matamoros, Mexico and his own in the United States. *Id.* at 1. He notes that he cannot save enough funds to plan for his children's college expenses. *Id.* at 1-2.

The applicant's husband explains that he is enduring stress due to sharing in his children's hardship as a result of family separation. *Id.* at 2. He provides that he must care for his daughter and that he experiences difficulty running his business while transporting her to after-school activities. *Id.* He states that his son will experience similar circumstances as he reaches his daughter's age. *Id.* He notes that his son had tubes placed in his ears due to an infection, and that they had the procedure performed in Mexico so that the applicant could care for him. *Id.* He expresses concern for the possibility that his children could require substantial medical care in Mexico. *Id.*

The applicant's husband explains that he has made mistake in his business that he attributes to the stress of family separation. *Id.* at 3. He states that he cannot leave his business and relocate to Mexico due to the fact that he has no formal education and minimal work experience in other fields. *Id.* He indicates that he would be unable to earn similar income in Mexico. *Id.*

The applicant's husband provides that he is experiencing anxiety and stress due to worrying about his family in Matamoros, Mexico, as there is growing violence and instability. *Id.* at 1, 3. He notes that there is a military presence in the area when he visits his family, and he feels threatened as a U.S. citizen. *Id.* at 3.

The applicant's husband previously stated that he cannot relocate to Mexico as his economic, emotional, and physical life is in the United States. *Prior Statement from the Applicant's Husband*, undated. He explained that he cannot operate his business from Mexico, as he is the owner and sole decision-maker. *Id.* at 2. He noted that he employs five individuals. *Id.* at 3. He expressed concern for his children's health care, and noted that he would be unable to care for them in the United States without the applicant. *Id.* at 4. He indicated that his parents could offer some assistance to him, but that they operate their own business which places demands on their time. *Id.* He added that he would not have easy access to the emotional support of his parents should he relocate to Mexico. *Id.* He stated that he would have difficulty adjusting socially to life in Mexico, as he identifies with the United States, and he may face discrimination and insecurity as a U.S. citizen. *Id.* at 5.

The applicant's father-in-law states that he has witnessed the applicant's husband experience significant emotional distress due to being separated from the applicant. *Statement from the Applicant's Father-in-Law*, dated January 20, 2008. He asserts that the applicant's children need her in order to develop in a healthy way. *Id.* at 1. He explains that the applicant's husband has never spent much time in Mexico, and that his family did not take him there frequently. *Id.* He notes that he and the applicant's mother-in-law travel to Mexico approximately two times each week to visit the applicant, and that they feel relieved when they return to the United States due to conditions in Mexico. *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 has not shown that her husband will suffer extreme hardship should he relocate to Mexico to maintain family unity.

The applicant's husband explains that he owns and operates a business in the United States, and that he would face financial difficulty should he reside in Mexico where he cannot continue his business activities. The AAO acknowledges that many small business owners work on site and manage the day-to-day affairs of their companies, and that they would encounter significant complications should they lose the ability to directly manage their operations on a daily basis. However, the applicant has not provided adequate evidence or explanation of her husband's business in order for the AAO to determine the impact his absence would have on the company. The applicant has not provided any financial documentation for the company, such as tax filings or profit and loss statements. The applicant's husband stated that he employs five individuals, yet he did not describe their duties such to show their knowledge of the company or whether they are capable of assuming management responsibility in his absence. Thus, the record does not show that the applicant's husband would lose his business or it would become unprofitable should he join the applicant in Mexico for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant's husband expressed that he would lose consistent emotional support from his parents should he reside in Mexico. However, the applicant's father-in-law indicated that he travels to Mexico approximately two times per week to visit the applicant, which supports that the applicant's husband would continue to see his parents frequently.

It is further noted that 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's husband explained his concern for his children's educational and cultural development should they reside outside the United States. However, it is first 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. Thus, the applicant and her family may return to the United States while her children are still school age should they choose, and denial of the present waiver application does not prevent her children from completing significant studies in the United States. Additionally, the applicant has not established that her children would lack educational opportunities in Mexico.

The applicant's husband expressed concern for the conditions in Mexico where the applicant resides. The AAO takes notice that the United States Department of State issued a Travel Warning for Mexico, warning that crime and violence has escalated throughout the country in all cities and that U.S. citizens should take precautions and remain in well-known tourist areas. *United States Department of State Travel Warning: Mexico*, dated March 14, 2010. However, the applicant has not indicated that she has experienced difficulty in Mexico. While the applicant's husband and father-in-law remarked on the presence of military in Mexico, particularly around border areas, the applicant has not shown that she or her family members have experienced harm or threatening situations. Nor has the applicant asserted or shown that she and her husband must reside in her current location should they deem conditions more favorable in another area of Mexico.

All stated elements of hardship to the applicant's husband, should he relocate to Mexico, have been considered in aggregate. Based on the foregoing, the applicant has not shown that her husband will face extreme hardship should he join her to maintain family unity for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant has also not shown that her husband will suffer extreme hardship should he remain in the United States. The applicant's husband indicated that he is enduring economic difficulty due to supporting the applicant in Mexico and his household in the United States. However, the applicant has not provided an account of her or her husband's regular income or expenses, or other documentation to show that her husband is unable to meet his financial requirements.

The applicant's husband indicated that his and the applicant's son required a medical procedure to place tubes in his ears due to an infection. However, the record does not show that the applicant's son has ongoing, unmet medical needs in Mexico that create emotional hardship for the applicant's husband.

The applicant's husband expressed that he is enduring emotional hardship due to separation from the applicant and his son. He noted that he is seeing a therapist. However, the applicant has not provided any documentation to support that her husband receives the services of a therapist due to emotional difficulty. The AAO acknowledges that the separation of family members often results in significant emotional hardship, and it is evident that the applicant's husband is suffering psychological challenges due to the separation of his family. However, the record shows that the applicant's spouse and in-laws reside near the United States border with Mexico, in close proximity to the applicant's residence in Matamoros, Mexico. Further, as the applicant's husband's parents visit the applicant in Mexico approximately two times each week, and the applicant's husband visits her, the record supports that her husband will continue to have consistent opportunity to visit her and their son. Accordingly, the applicant has not established that her husband will face emotional hardship that can be distinguished from that which is commonly expected when spouses reside apart due to inadmissibility.

The applicant's husband explained that he has difficulty providing activities for his daughter in the United States due to his work obligations, and he expressed concern that his son will face similar circumstances. Direct hardship to an applicant's children 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. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant and related circumstances will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results when an applicant must reside abroad due to a prior violation of U.S. immigration law. The AAO recognizes that the applicant's children face significant emotional hardship due to the separation of their family. Yet, the applicant has not established that her children will suffer consequences that can be distinguished from those ordinarily experienced. The applicant has not shown that her children's emotional hardship will elevate her husband's challenges to an extreme level.

All stated elements of hardship to the applicant's husband, should he remain in the United States, 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.