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U. S. Citizenship and Immigration Services  
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FILE:

Office: MEXICO CITY (CIUDAD JUAREZ)

Date: **MAR 04 2010**

IN RE:

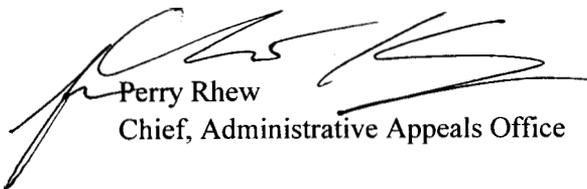
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and Section 212(i) of the Act, 8 U.S.C. § 1182(i)

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 Officer in Charge, 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)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A), as an alien previously removed; 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; and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation. The applicant is married to a naturalized 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), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Officer in Charge*, dated February 12, 2007.<sup>1</sup>

On appeal, counsel contends that the officer in charge erred in finding that the applicant is inadmissible for fraud or misrepresentation because “[a]t the time that [REDACTED] pled guilty of entering the United States without inspection and with the documentation of another person, she was a minor.” *Appeal Brief of Denial of Application to Waive Ground of Excludability (Inadmissibility) and Denial of Application for Permission to Reapply for Admission* at 1-2, dated April 6, 2007. In addition, counsel contends that the officer in charge erred in concluding that the applicant did not establish extreme hardship. *Id.* at 2-5.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED], indicating they were married on May 28, 1994; letters and declarations from the applicant and [REDACTED]; copies of the birth certificates of the couple’s three U.S. citizen children; letters from the applicant’s children; letters from the applicant’s children’s physician in Mexico; numerous letters of support, including from the applicant’s former employer and her church; a decision from an immigration judge denying the applicant cancellation of removal; decisions from the Board of Immigration Appeals (BIA) affirming the immigration judge’s decision and denying the applicant’s motion to reissue its previous decision; a psychological evaluation of the applicant; an order of deportation; photos of the applicant and her family; and a copy of an approved

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<sup>1</sup> The AAO notes that the officer in charge’s decision also denied the applicant’s Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). Although counsel’s Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B) and appeal brief purports to appeal both the waiver application and the denial of the applicant’s Form I-212 application, there is no indication a separate fee was paid for that appeal. As the appeal of the denial of the Form I-212 was not properly filed, no separate decision will be rendered for the denial of the Form I-212.

Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien. . . .

In this case, the record shows that on February 24, 1990, the applicant attempted to enter the United States using a document issued to “[REDACTED]”. Significantly, counsel does not contest that the applicant attempted to enter the United States using another person’s documentation, but rather, claims that the applicant cannot be found inadmissible as she was a minor at the time. Specifically, counsel relies on section 212(a)(2)(A)(ii)(I) of the Act for the proposition that the applicant’s conviction for entering the United States using the documentation of another person cannot be used to find her inadmissible as she was only seventeen years old at the time. *Appeal Brief of Denial of Application to Waive Ground of Excludability (Inadmissibility) and Denial of Application for Permission to Reapply for Admission* at 1-2, *supra*.

Counsel’s contention is unpersuasive. The exception in section 212(a)(2)(A)(ii)(I) of the Act upon which counsel relies is applicable only to crimes involving moral turpitude. Here, the applicant was found inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act, not for having committed a crime involving moral turpitude under section 212(a)(2)(A) of the Act. Therefore, the exception upon which counsel relies is inapplicable. Accordingly, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for fraud or willfully misrepresenting a material fact in order to procure admission into the United States.

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

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 shows that the applicant entered the United States without inspection prior to filing an application for asylum in March 1997. The applicant was referred to the Los Angeles Immigration Court and withdrew her asylum application during her removal proceedings on August 21, 1997. The Immigration Judge denied the applicant's subsequent request for cancellation of removal and granted her voluntary departure. The BIA dismissed the applicant's appeal on June 6, 2002, and denied her motion to reopen on October 22, 2003. The applicant did not depart the United States until March 26, 2004, after the expiration of her period for voluntary departure. Accordingly, she accrued unlawful presence from August 21, 1997, until March 26, 2004, a period of over six years. She is consequently also inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. *See* sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i). 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 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 applicant's husband [REDACTED] states that he has lived in the United States since he was two years old and that he and his wife have three children together. [REDACTED] contends that he also has a son, [REDACTED], from a previous relationship and that [REDACTED] lives with his mother. [REDACTED] states he sees [REDACTED] once a week and pays \$300 per month for child support. In addition, [REDACTED] claims that he and his wife had marital problems and were separated from 1998 until February 2000 after marriage counseling helped to fix their marital problems. He states he loves his wife, that she is his life, and that he adores her. [REDACTED] states that after his wife left the United States in April 2004, their two older children stayed with him until the school year ended in June 2004. [REDACTED] states he drove to Mexicali every weekend to see his wife and their youngest son, sacrificing the time he normally spends with [REDACTED]. [REDACTED] states that since his two older children moved to Mexico with their mother in June 2004, they have had a very difficult time adjusting to living in another country that is completely foreign to them. According to [REDACTED], he cannot move to Mexico to be with his wife because he would be unable to take [REDACTED] with him, he would be unable to continue his current relationship with [REDACTED], and he would be unable to afford paying child support because "[t]hat is more than [he] would make in Mexico."

Furthermore, [REDACTED] states that his entire family lives in the United States, including his lawful permanent resident parents, U.S. citizen siblings, and many nieces and nephews. He contends he has no family in Mexico to help him transition to living there. Moreover, [REDACTED] contends he wants his children to grow up in the United States where there are more opportunities. He claims his wife has never been in trouble with the police and that had they known the BIA denied his wife's case, she would have complied with the voluntary departure order. Furthermore, [REDACTED] states that the couple's two younger children have gotten sick often in Mexico, and that his middle child, [REDACTED] developed asthma in Mexico and has colitis. According to [REDACTED], the doctor in Mexico "believe[s] that part of the colitis is due to the fact that he [REDACTED] worries too much about things he has no control over," such as having his family together again and living in the United States. *Declarations of [REDACTED]*, dated March 30, 2007, December 21, 2006, and January 12, 2006.

A letter from a physician in Mexico states that [REDACTED] is "suffering from diverse pathologies such as: asthmatic crisis, and infectious colitis among other things [f]or which he has been given medical treatment." *Letter from [REDACTED]*, dated January 12, 2006. A letter from the same physician states that [REDACTED], the couple's youngest child, is "suffering from: respiratory infections like pharyngitis, pharyngoamigdalitis among others [f]or which he has been suggested further medical treatment." *Letter from [REDACTED]* dated January 12, 2006. The applicant states she has to take [REDACTED] to see the doctor at least once a month. *Declaration of [REDACTED]* dated January 19, 2006 (stating [REDACTED] "has also been sick a lot in Mexico").

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

The AAO finds that if [REDACTED] had to move to Mexico to be with his wife, he would suffer extreme hardship. The record indicates [REDACTED] has lived in the United States since he was two years old and that his entire family lives in the United States. In addition, the record shows that [REDACTED] has a son, [REDACTED], from a previous relationship whom he sees on a weekly basis and helps financially support. If [REDACTED] were to move to Mexico, he would be unable to continue his regular visits with his son. The record therefore shows that if [REDACTED] were to move to Mexico, he would experience hardship above and beyond what would normally be associated with deportation.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Although the AAO is sympathetic to the family's circumstances, if [REDACTED] remains in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The 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 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. 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).

With respect to the couple's children's medical problems, although the input of any health professional is respected and valuable, the letters from the children's physician do not sufficiently address the prognosis, treatment, or severity of their purported health conditions. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical or mental health condition or the treatment and assistance needed. In any event, even assuming the couple's children are experiencing health problems to the extent that they can no longer live in Mexico, neither the applicant nor [REDACTED] have addressed why their U.S. citizen children cannot live with [REDACTED] in the United States, particularly considering their two older children lived with him after the applicant departed the country until the school year ended in June 2004.

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.