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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
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Services

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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
(CDJ 2005 526 077 relates)

Date: **MAR 29 2010**

IN RE: [REDACTED]

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)

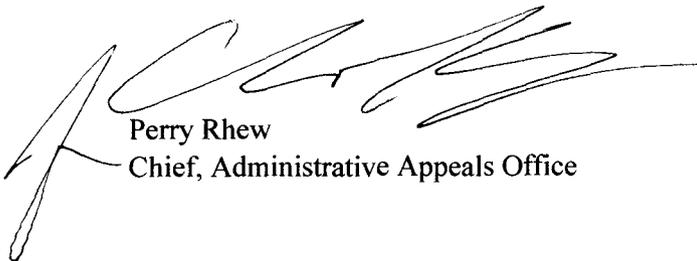
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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)(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 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), in order to reside with her husband in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Officer in Charge*, dated December 26, 2006.

The record contains, *inter alia*: two letters from the applicant's husband, [REDACTED] a mental health screening report; 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 officer in charge found, and the applicant does not contest, that she entered the United States on May 15, 2004, without inspection and remained until May 20, 2005. The applicant

accrued unlawful presence for over one year. She now seeks admission within ten years of her 2005 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.

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). 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 applicant's husband, [REDACTED], states that when his wife's waiver application was denied, "it really devastate[d] [his] whole life." [REDACTED] contends he married his wife twenty-six years ago and can no longer be without her. He states that at the beginning of their marriage, his wife lived in Mexico while he lived in the United States. According to [REDACTED], they had a family and let time pass before they realized that their children were not small anymore. He claims they tried more than once to get the applicant a tourist visa, but that it was always denied. [REDACTED] states that he has "been all alone all these years and [he] find[s] [him]self tire[d], frustrated, unhappy, and completely lonely." He states that he has lived with relatives since coming to the United States and that after a long day at work, he works for his relatives in order to pay his rent and transportation. [REDACTED] contends he hardly has any money for himself and that there are days he does not eat. He states that he is fifty years old now and that if his wife lived with him in the United States, his life would be a lot less stressful. He contends he has lost weight, feels tired, and has no strength. [REDACTED] states that he "cannot keep doing it all by [him]self [and that a]ll these years have not been easy."

In addition, [REDACTED] contends he cannot return to Mexico because he has no future there and it would be hard to find a job there. He states he cannot continue traveling back and forth to Mexico as he has been doing for years because he is too tired and frustrated. He states he earns \$1,200 per month in the United States and that he sends his wife \$650 per month. Furthermore, [REDACTED] claims his wife was diagnosed with diabetes and that he now has so many worries that he gets distracted at work. He states he went to a mental health clinic once, "but this is a bit expensive." According to [REDACTED], he has accomplished nothing in his life, is "unable to handle it anymore," and "cannot keep living like this." *Letters from* [REDACTED] dated February 14, 2007, and January 24, 2007.

A Mental Health Screening Report in the record states that [REDACTED] reported feeling a lack of motivation, sadness, an increase in crying, isolation, problems with his appetite, loneliness, and fatigue. The report states that [REDACTED] was observed as having symptoms of hopelessness, some sadness, and possible depression, but concludes that he did not require an immediate psychiatric referral. *Mental Health Screening Report*, dated January 22, 2007.¹

After a careful review of the record, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if his wife's waiver application were denied.

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, if [REDACTED] decides to stay 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. 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).

Regarding the mental health report, although the input of any mental health professional is respected and valuable, the AAO notes that the report in the record is based on a single screening administered on January 22, 2007. The record thus fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. The conclusions reached in the submitted evaluation 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.

With respect to [REDACTED] contention that he cannot move back to Mexico, where he was born, to be with his wife because he has no future there and that it would be hard to find a job, there is no evidence showing that his hardship is beyond what would normally be expected. The record does not show that [REDACTED] has any physical or mental health issues that would render his transition to

¹ To the extent the record contains a letter from [REDACTED] dated February 5, 2006, as well as a letter from the applicant's physician, the letters 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 letters cannot be considered.

moving back to Mexico an extreme hardship. Even assuming [REDACTED] experiences some financial difficulty if he moves back to Mexico to avoid the hardship of separation from his wife, 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).

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 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.