

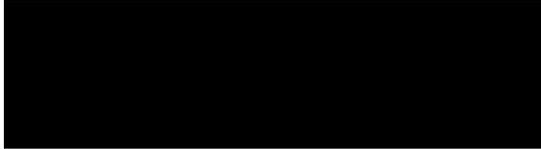
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FILE:



Office: LOS ANGELES, CALIFORNIA

Date AUG 21 2007

IN RE:



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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California, and 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 Immigration and Nationality Act (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 seeking readmission within 10 years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 in the United States with his wife and two United States citizen children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 11, 2005.

On appeal, the applicant, through his wife, claims she will suffer extreme hardship if the applicant is removed from the United States. *Form I-290B*, filed June 16, 2005.

The record includes, but is not limited to, statements from the applicant's wife, and a psychological assessment from [REDACTED], regarding the applicant and his wife's psychological health. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) 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 AAO notes that the record contains several references to the hardship that the applicant's United States citizen children would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver, under section 212(a)(9)(B)(i)(II) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant initially entered the United States without inspection in March 1997. On February 6, 1999, the applicant married [REDACTED], a United States citizen, in California. On February 18, 1999, the applicant's daughter, [REDACTED], was born in California. In March 1999, the applicant departed the United States. On April 14, 1999, the applicant's wife filed a Form I-130 on behalf of the applicant. On August 23, 1999, the Form I-130 was approved. In September 2000, the applicant returned to the United States. On March 24, 2001, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On August 8, 2001, the applicant's son, [REDACTED], was born in California. On April 10, 2002, the applicant filed a Form I-601. On April 19, 2005, the applicant filed another Form I-601. On May 11, 2005, the District Director denied the Form I-601, finding the applicant accrued more than a year of unlawful presence and he failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until March 1999, the month the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his March 1999 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

The applicant's wife asserts that she will face extreme hardship if the applicant is removed from the United States. *Form I-290B, supra*. The applicant's wife states she depends on the applicant "to provide the strength [for her] to overcome the problems of daily life and nurturing of [her] children." *Statement from* [REDACTED] dated June 10, 2005. The AAO notes that during the first year and a half of the applicant's daughter's life, the applicant was in Mexico, and it has not been demonstrated that the applicant's wife could not maintain the household or raise her child without the applicant. The applicant's wife claims that she "had problems in [her] pregnancy and [she] became severely anemic," and she worries that if she gets pregnant again, the applicant "would have to be there to help [her]." *Id.* The AAO notes that the applicant did not provide any documentation that his wife had complications during her two previous pregnancies or that she would be subject to complications with any future pregnancies. [REDACTED] states the applicant and his family "at present [are] functioning very well...They share, however, a moderate level of generalized anxiety related to their fear of deportation. Clearly, all members of this family are at risk for a full blown adjustment disorder with depression and anxiety should the deportation of [the applicant] remains unresolved." *Psychological Assessment by* [REDACTED], page 5, dated April 15, 2005. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted psychological assessment is based on a single interview between the applicant's family and the psychologist. There was no evidence submitted establishing an ongoing relationship between the psychologist and the applicant's family. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The AAO notes that the applicant's spouse did not claim that she or her children would suffer extreme hardship if they joined the applicant in Mexico. The applicant stated to Dr. [REDACTED] that, "his wife who is an American citizen and native born would follow him [to Mexico]." *Id.* page 2. Additionally, the applicant's wife and children speak Spanish. *Id.*, pages 1-2 ("The evaluation [of the [REDACTED] family] was conducted in Spanish...They spoke Spanish fluently. [REDACTED] and [REDACTED] are bilingual."). The applicant has not demonstrated that his children could not join him in Mexico. It has not been established that the applicant's children, who are 5 and 8 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Mexico. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she accompanied her husband to Mexico.

In addition, the applicant does not establish extreme hardship to his wife if she remains in the United States. As a United States citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that no documentation was submitted indicating that the applicant's wife could not obtain employment in the United States. Further, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that 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). The applicant's wife faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States court decisions have repeatedly 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 he merits a waiver as a matter of discretion.

In proceedings for application for 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.