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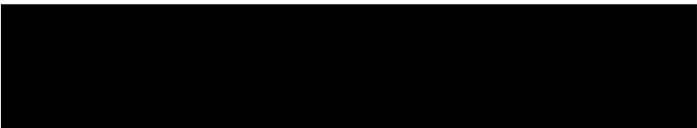


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FILE: CDJ 2004 638 163 Office: MEXICO CITY Date: **DEC 10 2006**

IN RE: 

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:

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).


John J. Grissom, Acting 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 in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with his U.S. citizen wife.

The district director found that, based on the evidence in the record, the applicant failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated February 16, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife will experience extreme hardship should the applicant be prohibited from entering the United States. *Appellate Brief from Counsel*, undated.

The record contains briefs from counsel; documentation regarding the applicant's wife's medical treatment; copies of photographs of the applicant and his wife; a copy of a death certificate for the father of the applicant's wife; statements from the applicant's stepchildren; a statement from the applicant's coworker and friend; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's marriage certificate, and; documentation in connection with statements the applicant made to a consular officer regarding his unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

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

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.

In the present matter, the record reflects that the applicant entered the United States without inspection in approximately 1992. He stated that he remained until April 30, 2005. Accordingly, he began accruing unlawful presence on April 1, 1997, the date the unlawful presence provisions were enacted. Section 212(a)(9)(B) of the Act. As he did not depart until April 30, 2005, he accrued a total of more than eight years of unlawful presence. He now seeks reentry to the United States as an immigrant pursuant to an approved Form I-130 filed by his wife on his behalf. The applicant was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant does not contest his 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 alien himself experiences upon being found inadmissible is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 pursuant to section 212(a)(9)(B)(v) of 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.

On appeal, counsel for the applicant asserts that the applicant's wife will experience extreme hardship should the applicant be prohibited from entering the United States. *Appellate Brief from Counsel* at 1-2. Counsel states that the applicant's wife is 52 years old, and she has known the applicant for ten years. *Id.* Counsel states that the applicant's wife brought her parents to the United States from El Salvador, and that her father recently died. *Id.* at 2. Counsel contends that the applicant's wife is experiencing emotional consequences as a result of her father's death, and that the applicant is a good companion for her. *Id.* Counsel noted that the applicant's wife had a difficult prior marriage, suggesting that this experience contributes to her emotional stress. *Id.*

Counsel explains that the applicant's wife works at a rate of \$8.12 per hour, and she is concerned about the costs of relocating to Mexico should she join the applicant. *Id.* Counsel states that the applicant works in Mexico, yet he earns little income. *Id.* Counsel asserts that the applicant's wife is not Mexican and she would have no access to employment there. *Id.*

Counsel noted that the applicant's wife's mother, children, and grandchildren will experience hardship if the present waiver application is denied. *Id.* Counsel mentioned that the applicant's stepchildren assist the applicant's wife. *Id.*

The applicant provided a letter from his wife's treating physician that states the following:

[The applicant's wife] has been our patient since 10/27/2000 for a variety of problems. She has been and continues to be treated for the chronic diagnoses of anxiety, depression, and sleep disturbances, among other things. As you can understand, each of these diagnoses is exacerbated by not having an adequate support system in place. Many of [the applicant's wife's] mental and physical health problems would be dramatically improved if she were reunited with [the applicant]. [The applicant's wife] would not have the same opportunities for medical treatment or financial income in Mexico that she does here and therefore it would be more appropriate to let her stay here, with [the applicant] joining her.

Letter from [REDACTED], dated February 24, 2006.

The applicant submitted statements from his stepchildren in which they attest that the applicant is close with his wife and he helps her emotionally and financially. *Statements from Applicant's Stepchildren.*

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship should the present waiver application be denied. The applicant has not provided adequate documentation to show that his wife will experience extreme hardship if he is prohibited from returning to the United States.

Counsel explained that the applicant's wife is experiencing emotional consequences as a result of being separated from the applicant. A physician for the applicant's wife, [REDACTED] explains that the applicant's wife has been under treatment for various mental and physical conditions since October 27, 2000. Letter from [REDACTED] at 1. However, the applicant and his wife did not marry until December 18, 2001, and the applicant's wife did not file a Form I-130 relative petition on behalf of the applicant until February 4, 2002. The applicant's wife's conditions existed prior to her marriage to the applicant, and prior to the determination that the applicant was inadmissible. Dr. [REDACTED] does not explain whether the applicant's wife's conditions changed or were exacerbated by the applicant's departure or inability to return to the United States before April 30, 2015. Dr. [REDACTED] does not indicate the severity of the applicant's wife's mental health problems, or the frequency that she requires or has received treatment during the referenced period. As the applicant's wife works, the record suggests that she is able to perform ordinary daily functions and meet her needs. While it is understood that the applicant's presence can be helpful for the applicant's spouse in coping with her father's death and her existing emotional challenges, the applicant has not submitted sufficient documentation to show that his absence will cause his wife emotional hardship that rises to the level of extreme hardship.

It is noted that the applicant has not provided a statement from his wife describing the effect the applicant's absence is having on her. The applicant's stepchildren generally indicated that the applicant supports his wife emotionally, yet they did not establish that his wife is experiencing consequences that are greater than those ordinarily expected of the close family members of those prohibited from entering the United States. In

Matter of Pilch, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals 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 AAO recognizes that the applicant's wife will endure emotional hardship as a result of separation from the applicant should she remain in the United States without him, yet the record does not sufficiently distinguish her situation from the common effects experienced by the family members of those deemed inadmissible.

The applicant has not shown that his wife relies on him for economic support. Counsel stated that the applicant's wife earns \$8.12 per hour for her employment. The applicant's stepdaughter noted that the applicant's wife works two jobs. *Statement from* [REDACTED], at 1, undated. Counsel noted that the applicant's wife makes a payment of \$794 per month for a house payment, yet the applicant did not submit any documentation of his wife's regular income or expenses, such as monthly bills or pay stubs. Thus, the AAO is unable to assess the economic impact the applicant's absence will have on his wife should she remain in the United States without him.

The applicant has not shown that his wife would experience extreme hardship should she relocate to Mexico with him to maintain family unity. Should she do so, she would not experience the emotional effects of separation from the applicant. The applicant's wife is a native of El Salvador, and the applicant has not asserted or shown that she lacks Spanish language fluency or familiarity with Central American culture such that she would have difficulty adjusting to life in Mexico. The record reflects that the applicant works in Mexico, thus he and his wife would have some income. The applicant has not submitted sufficient explanation or documentation to show that he and his wife would endure significant economic difficulty should they reside in Mexico. Dr. [REDACTED] indicated that the applicant's wife would not have the same access to medical treatment in Mexico, yet he did not indicate a basis for this opinion. As noted above, the applicant has not established the severity of his wife's health condition or the frequency or type of treatment she requires. Thus, the applicant has not shown that his wife's health status would cause her significant hardship should she relocate to Mexico.

Based on the foregoing, the applicant has not shown that the instances of hardship that will be experienced by his wife should the applicant be prohibited from entering the United States, considered in the aggregate, rise to the level of extreme hardship. 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.