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U.S. Citizenship
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FILE:



Office: PHOENIX

Date:

DEC 18 2008

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 PETITIONER:



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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, and 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 first entered the United States as a B-2 visitor for pleasure in September 1989 and remained until 2000, when he returned to Mexico. He was found to be inadmissible to the United States under 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 one year or more. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He 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 remain in the United States with his spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated August 29, 2006.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant's wife would not suffer extreme hardship if the applicant were not allowed to remain in the United States. Counsel submitted additional evidence not submitted with the waiver application to support this assertion, and requests that this evidence be considered in determining whether the applicant's spouse would suffer extreme hardship. This evidence includes an affidavit from the applicant's wife, a psychological evaluation for the applicant's wife, medical records for the applicant's father-in-law, a letter from the mother of the applicant's son, and medical records for the applicant's son. 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:

- (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 Secretary, 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.

A waiver of the bar to admission resulting from violation of 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 alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's spouse. 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 (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. These factors included 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.

U.S. court decisions have additionally 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-five year-old native and citizen of Mexico who entered the United States in September 1989 as a visitor for pleasure with permission to remain for six months. He remained in the United States until 2000, when he returned to Mexico. The applicant therefore accrued unlawful presence from April 1, 1997, the date section 212(a)(9)(B) of the Act went into effect, until he departed the United States in 2000. The applicant returned to the United States as a visitor for pleasure on December 27, 2003 and has resided in the United States since that date. The record further reflects that the applicant married his wife, a thirty-four year-old native and citizen of the United States, on January 13, 1998. The applicant and his wife reside in Phoenix, Arizona with her thirteen year-old son.

Counsel for the applicant states that the applicant's wife will suffer extreme hardship if the applicant is removed from the United States. Counsel states that she must care for her father, a U.S. Citizen who suffers from a serious medical condition, and for her son, who suffers from asthma. *See Counsel's Brief in Support of Appeal* at 3. The applicant's wife states that she does not work and

would not be able to support her son [REDACTED] who lives with her and the applicant, if the applicant were not permitted to remain in the United States. *See Affidavit of [REDACTED]* dated September 20, 2006. She states that the applicant is their only source of financial support, and since she did not graduate from high school, she would not be able to obtain a “significant job,” and cannot continue studying because she must take care of her son. She further states that her son has chronic asthma, and he needs treatment and special care that she would not be able to provide if the applicant were removed from the United States. She additionally states that that her father has a medical condition known as tardive dyskinesia and that she needs the applicant to remain in the United States so that she can continue to take care of her father. She states: “I will be extremely affected and suffer extreme hardship if my husband is not granted the I-601 waiver he applied for, please consider my mental anguish and suffering for all this situation.” *Affidavit of [REDACTED]*

Counsel asserts that the applicant’s wife would suffer emotional hardship if the applicant were removed because she would not be able to care for her son and father, who both suffer from medical conditions. Although the emotional effects of a serious medical condition of a qualifying relative’s child or other close relative could be considered in assessing a claim of extreme hardship, the evidence in the present case does not establish that either the applicant’s stepson or father-in-law is suffering from such a condition. The applicant’s wife states in her affidavit that her son David suffers from chronic asthma and needs treatment and special care, but no evidence was submitted to support this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In support of the assertions concerning the medical condition of the applicant’s father-in-law, counsel submitted copies of his medical records, including a medical report prepared for the physician who referred the applicant’s father-in-law for neurological tests. The documents submitted, which were prepared by one medical professional for another medical professional, contain a diagnosis, but no specific information concerning the medical condition, such as description in plain language of the exact nature and severity of the condition, any treatment necessary, and any family assistance needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed.

The AAO notes that no documentation concerning the applicant’s husband’s income and employment or the family’s expenses was submitted to support an assertion that the applicant’s wife would suffer financial hardship as a result of separation from the applicant. Further, although the applicant’s wife states she would not be able to find employment and support her son, the record includes income tax returns for 2004 that indicate that she was employed and the applicant was not. There is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant’s removal. The financial impact of the loss of the applicant’s income therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant’s husband. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

Counsel asserts that if the applicant were removed from the United States, his wife would suffer emotional and psychological hardship due to being separated from him and unable to care for her family members on her own. As evidence of this hardship counsel submitted a report from Dr. [REDACTED] a psychologist who evaluated the applicant's wife. The report indicates that the applicant and his wife were evaluated on September 16, 2006. The report states that the applicant's wife worked until recently and has become depressed and anxious since the denial of the applicant's waiver application. *See Report from [REDACTED] at 2.* It states that she reports symptoms including loss of appetite, difficulty sleeping, crying spells, and headaches. *Id.* The report contains a diagnosis of major clinical depression and anxiety and states:

She is fearful of following her husband to Mexico because she has never lived there, feels inadequate with the language, and would not get proper medical treatment for her son. . . . She is distraught over the thought of being separated from her spouse, and having to manage on her own. Her present conflict continues to exasperate her emotional conditions I strongly recommend that [REDACTED] remain a consistent financial and emotional force in his families' lives. *Report from [REDACTED] at 3.*

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a clinical interview of the applicant's spouse, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for any condition such as depression or anxiety. Further, there is no indication on the record that the applicant's wife received any subsequent treatment despite the diagnosis of depression and anxiety. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist. This renders the psychologist's findings speculative and diminishes the evaluation's value to a determination of extreme hardship.

The evidence does not establish that any emotional difficulties the applicant's wife would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of her distress caused by the prospect of being separated from her husband is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

There is no evidence on the record concerning potential hardship to the applicant's wife if she were to relocate to Mexico, such as information about any family ties in the United States, economic conditions in Mexico, or access to medical care there. Without such evidence the AAO cannot determine whether relocating to Mexico would result in hardship to the applicant's wife that would be more severe than that normally experienced as a result of deportation or exclusion.

Any hardship the applicant's wife would experience due to the applicant's removal from the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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. 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.