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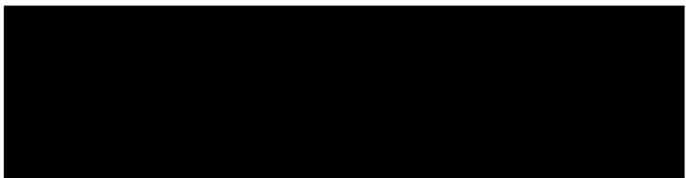
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



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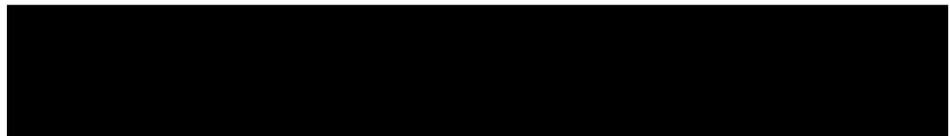
FILE: [REDACTED] Office: MEXICO CITY (JUAREZ) Date: JAN 29 2008
(CDJ 2004 789 847 relates)

IN RE: Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, 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, pursuant to the record, admitted on November 8, 2005 to the interviewing officer at the American Consulate General in Ciudad Juarez, Mexico that he had entered the United States without inspection in April 1999 and had remained until October 2005, when he voluntarily departed the United States. The applicant was thus 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 more than one year. 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 be able to reside in the United States with his U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 14, 2006.

The following documents were submitted in support of the appeal: an affidavit from the applicant's spouse, a U.S. citizen, dated October 4, 2006; an affidavit from the applicant's spouse's mother, dated October 4, 2006; bills issued to the applicant's spouse; confirmation of the applicant's and his spouse's property ownership; documentation confirming that the applicant's and his spouse's property is being rented to a third party; evidence that the applicant's spouse is receiving government assistance; and evidence of the applicant's spouse's second pregnancy. In addition, the applicant's spouse sent a follow-up letter, dated April 29, 2007 and evidence of a referral for her child, Elias, to see a child psychologist, dated April 26, 2007. The entire record was reviewed and considered in rendering this decision.¹

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.

¹ The record indicates that the applicant's spouse sent a letter to the AAO requesting that the instant appeal be "...withdrawn from your system..." *Letter from* [REDACTED] dated November 14, 2007. However, as the aforementioned request did not originate from either the applicant or counsel for the applicant, the AAO is unable to honor [REDACTED]'s request for withdrawal of the appeal.

....

(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...

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. 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.

To begin, the record contains references to the emotional and psychological hardship that the applicant's child, [REDACTED], born in September 2004, is suffering due to the applicant's inadmissibility. As stated by the applicant's spouse, "...my son has began (sic) to display what his pediatrician described as clinical depression..." *Letter from* [REDACTED] dated April 29, 2007. 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 or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant or their children cannot be considered, except as it may affect the applicant's spouse. It has not been established that [REDACTED] emotional and psychological sufferings due to the applicant's inadmissibility are causing the applicant's spouse extreme hardship.

The applicant's spouse further states that she is suffering financial hardship due to the applicant's absence. As stated by the applicant's spouse, "...I am pregnant and expecting a child in January. I live with my mother...where I do pay rent or utilities. My husband and I own a [REDACTED]. However, without my husband, I am unable to make the mortgage payment. I have rented this house in order to keep up with the mortgage, but I make no profit from it. I receive government assistance to help her pay for my medical care and to support my son, [REDACTED]..." *Affidavit from* [REDACTED], dated October 4, 2006.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that

“lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”).

The applicant has not provided an explanation for why he is unable to assist his spouse with respect to the finances of the U.S. household by obtaining gainful employment in Mexico. Moreover, it has not been established that it would be an extreme hardship for the applicant’s spouse to obtain gainful employment in the United States, thereby assisting in the household costs. 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)).

The AAO recognizes that the applicant’s spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. The AAO concludes that based on the evidence provided, it has not established that the applicant’s spouse is suffering extreme emotional and financial hardship due to the applicant’s absence.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant’s waiver request. In this case, the applicant has not asserted any reasons why his spouse is unable to relocate to Mexico.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to return to the United States, and moreover, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to accompany the applicant. The record demonstrates that the applicant’s spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.