

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

H3

[REDACTED]

FILE:

[REDACTED]

Office: PHILADELPHIA, PA

Date:

**JUL 21 2008**

IN RE:

[REDACTED]

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:

[REDACTED]

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, Philadelphia, Pennsylvania and 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 admission within ten years of his last departure from the United States. The applicant is the husband and father of U.S. citizens, and seeks a waiver of inadmissibility in order to reside in the United States with his family.

The district director noted that the applicant was inadmissible to the United States under section 212(a)(9)(B) of the Act. He found that the record did not establish that the applicant's spouse, [REDACTED] would suffer extreme hardship if he were removed from the United States and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, dated November 13, 2006.

On appeal, counsel contends that the district director erred as a matter of law and fact in concluding that the applicant had failed to establish that [REDACTED] and his children would suffer extreme hardship if he were to be removed from the United States. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated December 8, 2006. In support of his assertions, counsel submits a brief, dated January 5, 2007.

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 record indicates that the applicant entered the United States without inspection in 1991 and has since lived in the United States. On June 17, 1997, the applicant married [REDACTED]. On February 24, 1998, [REDACTED] filed a Form I-130, Petition for Alien Relative, on the applicant's behalf, which was approved on May 1, 1998.

On April 18, 2001, the applicant filed the Form I-485, Application to Register Permanent Resident or Adjust Status, based on the approved Form I-130. On December 27, 2001, the applicant received an advance parole and, thereafter, departed the United States. On January 14, 2002, the applicant was paroled back into the United States.

Section 301(b) of the Illegal Immigration and Immigrant Responsibility Act of 1996 Pub.L. 104-208, amended section 212(a) of the Act to render inadmissible any alien who departs the United States after accruing unlawful presence. The unlawful presence provisions of the Act became effective on April 1, 1997. As defined in section 212(a)(9)(B)(ii) of the Act, an alien is deemed to be unlawfully present in the United States if:

The alien is present in the United States after the expiration of the period of stay authorized by the Attorney General [now Secretary of Homeland Security] or is present in the United States without being admitted or paroled.

For the purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II), the proper filing of an affirmative application for adjustment of status has been designated as a period of stay authorized by the Attorney General (now Secretary). See Memorandum by [REDACTED] Executive Associate Commissioner, Office of Field Operations dated June 12, 2002. Therefore, in the present case, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions, until April 18, 2001, the date on which he filed the Form I-485. When he departed the United States on advance parole, he triggered the ground of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act as he had been unlawfully present in the United States for more than one year prior to filing the Form I-485.

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 lawful permanent resident spouse and/or parent of the applicant. Hardship that the applicant or his children may experience as a result of separation is not considered in section 212(a)(9)(B)(v) waiver proceedings, except to the extent that it causes hardship to the applicant's spouse and/or parent. In the present case, the applicant's only qualifying relative is [REDACTED]

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. [*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted)].

U.S. 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, *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. *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 notes that extreme hardship to the applicant's spouse must be established if she relocates to Mexico and if she remains in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will now consider the relevant factors in the adjudication of this case.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to [REDACTED] in the event that she relocates to Mexico. On appeal, counsel asserts that [REDACTED] and her children have never been in Mexico and have no ties to Mexico. He further contends that the district director failed to consider the economic, social or political conditions in Mexico that might create hardship for the applicant's family. The AAO notes, however, that the record offers no evidence in support of counsel's claims and [REDACTED] does not address the possibility of relocating to Mexico in the statement she submitted in support of the Form I-601. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the burden of proof in this matter is on the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. As the applicant did not submit any country conditions materials establishing the specific economic, social and political conditions in Mexico that would affect [REDACTED] the district director was not obligated to consider such conditions in assessing hardship to [REDACTED]. Without evidence of the impact that relocation to Mexico would have on [REDACTED], the AAO concludes that the record does not demonstrate that she would suffer extreme hardship if she moved to Mexico with the applicant.

The second part of the analysis requires the applicant to prove that [REDACTED] would suffer extreme hardship if she remains in the United States without the applicant. Counsel, on appeal, states that the fact that the applicant's children would be living in the United States without the applicant is "self-evident of the extreme hardship to the wife." In her own statement, [REDACTED] indicates that she and the applicant have four children, three of whom, the applicant's sons, have special educational needs. [REDACTED] states that the youngest of her three sons also has difficulty handling his emotions and that when confronted by change, he has outbursts of emotion and anger. Were the applicant to be removed [REDACTED] states, this child would be destroyed as he would not be able to deal with such a drastic change in his life. As proof, [REDACTED] points to his emotional and angry reaction to a change in his school, which required her to go to his new school and sit with him on a daily basis. Without the applicant, [REDACTED] asserts that she would have to find full-time employment that would take her away from her special needs children and she would not be able to meet her responsibilities in connection with their individual development plans. [REDACTED] also states that, without the applicant, she would face significantly reduced financial circumstances and could not afford to provide her children with a home in a safe neighborhood. She concludes that the family needs the applicant and that, without him, they are not a family.

The AAO notes that the record documents the differing learning disabilities of the applicant's sons and, specifically, the difficulties experienced by the applicant's youngest son when he changed schools in the autumn of 2005. It further finds the documentation to establish that each of the applicant's children is participating in an individualized education program to meet his specific needs and that the applicant's youngest son is also receiving psychological counseling on a weekly basis. The AAO notes that the submitted documentation establishes that [REDACTED] is a member of the team of educators/therapists that oversees each of her children's specialized programs. It finds that [REDACTED] responsibility for three children with demonstrated educational and emotional problems, when considered in combination with the reduced financial circumstances she would face following the applicant's removal, would constitute extreme hardship.

Despite the determination of extreme hardship just noted, the record does not support a finding that [REDACTED] would also face extreme hardship upon relocation to Mexico. Therefore, the applicant has failed to establish statutory eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. As the applicant is statutorily ineligible for relief under 212(a)(9)(B)(v), no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

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.

**ORDER:** The appeal is dismissed.