

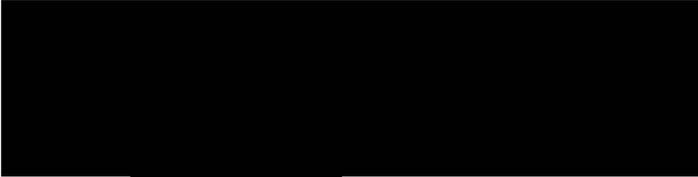
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FILE:  Office: CIUDAD JUAREZ, MEXICO Date: MAR 10 2008

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 Officer in Charge, Ciudad Juarez, Mexico and appealed to Administrative Appeals Office (AAO). The AAO rejected the appeal as untimely filed. Documentation was subsequently sent to the AAO indicating that the appeal was timely filed. The AAO will therefore withdraw its prior decision and sua sponte reopen the matter. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who, pursuant to the record, admitted in May 2005 to the interviewing officer at the American Consulate General in Ciudad Juarez, Mexico that he had entered the United States without inspection in March 2000 and had remained until March 2003, 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 officer in charge 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 Officer in Charge*, dated December 2, 2005.

The following documents were submitted in support of the appeal: counsel's brief<sup>1</sup>; a letter from [REDACTED] Trial Team Leader, Sex Crimes and Child Abuse Unit, Office of [REDACTED] County Prosecuting Attorney, dated January 5, 2005; print-outs of email communications between counsel and the U.S. Department of State with respect to the applicant's Form I-601 application; and a previously submitted letter from the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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.

....

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<sup>1</sup> The AAO notes that counsel's cover letter with respect to the appeal was dated February 4, 2004. However, as the I-601 denial was not issued until December 2, 2005, we presume that counsel meant to date the letter February 4, 2006.

(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 children are suffering due to the applicant's inadmissibility. As stated by the applicant's spouse, "...our son suffers from the separation. When he leaves his father in Mexico he cries hysterically for hours after our departure. He continually asks for his dad and wants to know when he is coming home. When he gets to talk to him on the phone this just tears him up when he has to hang up. He gets very angry and acts out...He seems mad all the time...Our kids are missing out on so much while being a separated family..." *Letter from* [REDACTED]

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 the children's 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 emotional and psychological hardship due to the applicant's inadmissibility. As stated by the applicant's spouse, "...When we were first separated in 2003 I suffered from depression and anxiety attacks. I went under doctor care and was on depression medication. He removed me from my work for a total of three months. Then I realized I needed to be the one to provide for my family and that my job is very important to keep us going. The depression has not gone away and that is keeping me from being 100% for my kids. I often breakdown and have crying spells that last for long periods of time..." *Id.* at 1.

The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any corroborating evidence of the treatment previously provided for the depression referenced in the applicant's spouse's statement. Moreover, counsel has not provided any documentation from a licensed physician or mental health professional to establish the current severity of the applicant's spouse's depression and the short and long-term treatment plans. 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)).

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, 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, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Counsel further contends that the applicant's spouse is suffering financial hardship due to the applicant's absence. As stated by the applicant's spouse, "...He [the applicant] was the one that helped me and made it possible to buy our first home. I am now struggling to keep it....When I met [the applicant] I started out with nothing....We now have a house of our own and a new truck and car. I would never be where I am today if it wasn't for [the applicant]. If we are not joined together we will lose our house, I will lose my job I have been employed at for 8 years. We will lose both of our vehicles. I will be required to seek assistance to help in the care of our kids...." *Id.* at 1-2.

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 (9<sup>th</sup> Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

In this case, no financial documentation has been provided to establish the applicant's and his family's current economic situation, to corroborate that the applicant's spouse is suffering extreme financial hardship due to

the applicant's inadmissibility. Nor has it been established that the applicant is unable to obtain gainful employment in Mexico, thereby assisting with the maintenance of the U.S. household. While the applicant's spouse may need to make adjustments with respect to the family's financial situation while the applicant resides abroad due to his inadmissibility, it has not been shown that such adjustments would cause the applicant's spouse extreme hardship.

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. The AAO concludes that based on the evidence provided, it has not established that the applicant's spouse is suffering extreme emotional, psychological and/or 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 relocates 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.