

data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

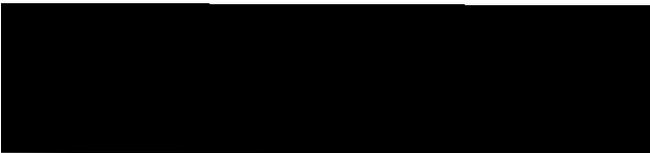
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H3



FILE: [Redacted] Office: LOS ANGELES (SANTA ANA), CA Date: OCT 10 2008

IN RE: Applicant: [Redacted]

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:

SELF-REPRESENTED

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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 will be denied.

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. The applicant presently seeks a waiver of her ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director determined that the applicant had failed to establish a qualifying relative would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant asserts that her U.S. lawful permanent resident mother has diabetes and her U.S. citizen father has suffered heart problems. The applicant indicates that she is the primary caretaker for her parents, and that they will suffer physical and emotional hardship if she is denied admission into the United States.

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

[A]ny 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.

The record reflects that the applicant entered the United States unlawfully sometime in 1994. The applicant remained in the United States until November 2000, at which time she departed the country for a few weeks. The applicant reentered the United States sometime in November 2000, and she has remained in the United States since that time. The record reflects that the applicant filed a Form I-485, adjustment of status application on April 13, 2005.

“[D]eparture from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) . . . if that departure was preceded by a period of unlawful presence of at least 1 year. . . . [T]he departure which triggers inadmissibility . . . must fall at the end of a qualifying period of unlawful presence. . . . An alien unlawfully present for 1 year or more who voluntarily departs is barred from admission for 10 years. *In re Rodarte-Roman*, 23 I&N Dec. 905, 908 (BIA 2006.)

The applicant was unlawfully present in the United States for more than one year between April 1, 1997 (the date section 212(a)(9)(B)(i) of the Act provisions went into effect) and sometime in November 2000. She is seeking admission less than ten years after her departure from the United States. The applicant is therefore subject to the provisions of section 212(a)(9)(B)(i)(II) of the Act related to unlawful presence.

Section 212(a)(9)(B)(v) of the Act provides that:

[T]he Attorney General [now Secretary, Department of Homeland Security, "Secretary"] has sole discretion to waive clause [212(a)(9)(B)](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 evidence in the record reflects that the applicant's mother is a U.S. lawful permanent resident, and that her father is a naturalized U.S. citizen. The applicant's parents are thus qualifying family members for purposes of section 212(a)(9)(B)(v) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board deemed the following factors to be relevant in determining extreme hardship to a qualifying relative:

[T]he 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.

The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994) that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996.) Court decisions have consistently held that the common results of deportation are insufficient to prove extreme hardship. *Perez v. INS*, *supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991.)

The record contains the following evidence relating to the applicant's extreme hardship claim:

A September 9, 2005, letter from the applicant's father ([REDACTED]), stating that his family is a very attached family, and that he, the applicant's mother, and the applicant's brothers would be seriously **affected**, emotionally and psychologically, if the applicant were removed to Mexico. Mr. [REDACTED] states further that it would be difficult for the applicant to find employment in Mexico due to the poor economy, and he states that the applicant would be unable to afford all of her needs, or to build a better future in Mexico.

The record contains no other evidence relating to the applicant's extreme hardship claim.

The AAO notes that the record contains no medical and affidavit evidence to corroborate the applicant's claim that her parents require help for medical ailments, or that they are reliant on the applicant to care for them. The AAO

additionally notes that the provisions of section 212(a)(9)(B)(v) of the Act do not allow for consideration of hardship to the applicant herself.

Emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996.) The AAO finds, upon review of the totality of the evidence, that the applicant has failed to establish that her parents would experience hardship beyond that normally experienced upon the removal of a family member, if they remain in the U.S. without the applicant.

The applicant did not present evidence, or claim, that her parents would suffer hardship if she were denied admission into the United States and her parents moved with her to Mexico. The applicant therefore also failed to establish that her parents would suffer extreme hardship if they moved with the applicant to Mexico.

A section 212(a)(9)(B)(v) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that her parents will suffer extreme hardship if she is denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the Form I-601 will be denied.

**ORDER:** The appeal is dismissed. The application is denied.