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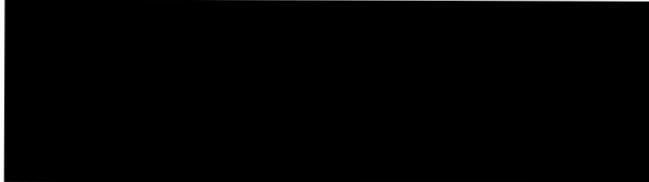
U.S. Department of Homeland Security  
20 Mass. Ave, N.W. Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE [REDACTED] Office: MEXICO CITY Date: SEP 29 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:

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director (“district director”), Mexico City, Mexico. 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 readmission within 10 years of June 2007, the date of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with his U.S. citizen wife and daughter.

The district director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of Acting District Director*, dated June 9, 2008.

On appeal, the applicant’s wife asserts that she will suffer emotional and economic hardship should the applicant be prohibited from entering the United States. *Statement from Applicant’s Wife on Appeal*, submitted June 28, 2008.

The record contains statements from the applicant’s wife, the applicant’s mother- and father-in-law, a public health nurse, the wife’s landlord, the applicant’s sister-in-law, the applicant’s wife’s friend, the applicant’s wife’s employer, and the applicant’s church; copies of airline ticket stubs for the applicant’s wife and daughter, and; bills for the applicant’s wife’s household. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

....

(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.

In the present matter, the record indicates that the applicant entered the United States without inspection in approximately July 2000, and he remained without a legal immigration status until June 2007, when he voluntarily departed for Mexico. Thus, the applicant accrued approximately seven years of unlawful presence. He seeks reentry as a permanent resident based on an approved Form I-130 relative petition filed on his behalf by his U.S. citizen wife. Accordingly, he was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant does not contest his inadmissibility on appeal.

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 lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon being found inadmissible is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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.

On appeal, the applicant's wife asserts that she will suffer emotional and economic hardship should the applicant be prohibited from entering the United States. *Statement from Applicant's Wife on Appeal* at 1. She states that her and the applicant's three-year-old daughter misses the applicant and looks for him. *Id.* She explains that she is suffering from significant emotional consequences as a result of separation from the applicant, and that she is sad. *Id.* She indicates that she has many bills to pay, and she is having difficulty meeting her economic needs in the applicant's absence. *Id.* She states that the applicant could work in the United States to assist her and their daughter if he is permitted to return. *Id.* In a prior letter, the applicant's wife stated that she and the applicant's daughter had an allergic reaction in Mexico, suggesting that she would experience health problems should she relocate there. *Prior Statement from Applicant's Wife*, undated.

The applicant submitted numerous letters from the applicant's wife's family and friends in which they attest that the applicant's wife is experiencing emotional difficulty due to being separated from the applicant, including depression and loss of appetite. They further asserted that the applicant's wife is facing economic and childcare challenges due to the applicant's absence. The applicant's wife's employer and coworkers

confirmed that she is experiencing negative effects due to separation from the applicant, including challenges with childcare and the ability to focus on her work. A public health nurse, ██████████ expressed her opinion that the applicant's wife is enduring emotional difficulty due to separation from the applicant, and that family reunification is best for the applicant's wife and daughter. *Statement from* ██████████ dated May 29, 2007. ██████████ further stated her opinion that relocating the applicant's wife and daughter to Mexico is not advantageous for the family. *Id.*

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The applicant explains that his wife is experiencing emotional hardship due to separation from the applicant. The AAO has given careful consideration of the statements from the applicant's wife, her friends and family, her employer, and a public health nurse, and assessed all hardships discussed therein. While the AAO acknowledges that family separation is emotionally difficult, the applicant has not shown that his wife is suffering unusual consequences that go beyond those commonly experienced by family members of those deemed excludable or inadmissible.

In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals 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 recognizes that the applicant's wife will endure hardship as a result of separation from the applicant should she remain in the United States. However, her situation is common to the family members of those deemed inadmissible and the applicant has not shown that her emotional hardship rises to the level of extreme hardship.

The applicant's wife asserts that she is having difficulty meeting her economic needs in the applicant's absence, and that the applicant could work in the United States to assist her and their daughter. However, while the applicant has submitted numerous receipts for bills and services, he has not clearly shown his wife's current monthly expenses such that the AAO can assess his wife's consistent economic needs. Nor has the applicant indicated whether he works in Mexico, whether he provides economic assistance to his wife, or whether his wife has other resources such as savings or assets. While the AAO acknowledges that acting as a single parent with a modest income poses significant economic challenges, the applicant has not established that his wife will experience financial hardship that rises to the level of extreme hardship.

**The record contains references possible hardships to the applicant's daughter.** Direct hardship to an applicant's child is not relevant in waiver proceedings under Section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and

anticipated results of exclusion and deportation. The applicant has not shown that his daughter would experience emotional or economic suffering that brings his wife's challenges to the level of extreme hardship.

Considering all factors of hardship to the applicant's wife, should she remain in the United States without the applicant, the applicant has not shown that his wife would experience extreme hardship.

Additionally, the applicant's wife may relocate to Mexico with the applicant to maintain family unity if she chooses. The applicant has not presented sufficient explanation or evidence to show that his wife would experience extreme hardship should she choose to depart the United States.

Pursuant to Section 212(a)(9)(B)(v) of the Act, in order to establish eligibility for a waiver, an applicant must show that denial of the application "*would* result in extreme hardship." Section 212(a)(9)(B)(v) of the Act (emphasis added). Accordingly, the applicant must show that all of his wife's options constitute extreme hardship. Thus, in adjudicating an application for a waiver under section 212(a)(9)(B)(v) of the Act, Citizenship and Immigration Services (CIS) must consider all hardships to qualifying relatives relating both to relocating abroad and to remaining in the United States. In the present matter, the applicant has not shown that his wife would experience extreme hardship should she remain in or depart from the United States.

Based on the foregoing, the applicant has not shown that the instances of hardship that will be experienced by his wife should he be prohibited from entering the United States, considered in the aggregate, rise to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.