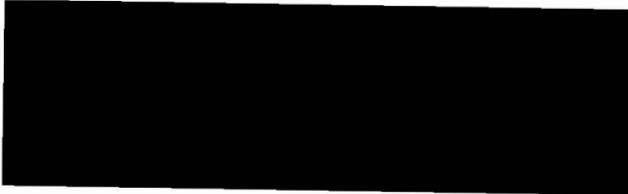


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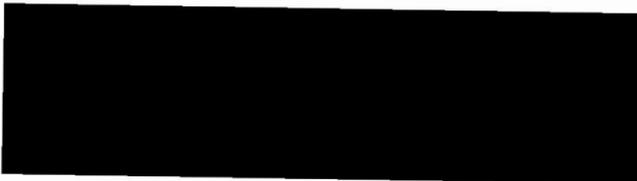
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IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(a)(9)(B) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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. 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 § 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 ten years of his last departure from the United States. The applicant is married to a naturalized citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife and children.

The officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. On appeal, counsel asserts that the officer in charge failed to consider the effect of the applicant's inadmissibility on his young daughter and other family unity issues. Counsel claims that the applicant's spouse is experiencing extreme emotional and financial harm due to the separation from the applicant. The applicant's wife also asserts that she cannot relocate to Mexico, because her two older children are from a previous marriage, and their father would not let her take them out of the country.

On appeal, counsel submits a brief, affidavits by the applicant's wife and her daughter, a statement by the applicant's father in law, financial documents, evidence that the applicant completed a rehabilitation program, and other documentation. The AAO has reviewed the entire body of evidence in rendering this decision on appeal.

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 reflects that the applicant entered the United States without inspection in February 1995. He therefore accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until May 2002, when he was removed from the United States. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of his 2002 departure from the United States. The applicant is inadmissible to the United States under § 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A § 212(a)(9)(B)(v) waiver of the bar to admission resulting from § 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 or his children experience upon deportation is irrelevant to § 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 pursuant to § 212(i) of the Act. 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.

In a letter dated September 21, 2005, the applicant's spouse wrote that she was unable to move to Mexico, as her two oldest children's father would not allow her to take them with her, and she could not leave them in Arkansas. There is no documentation on the record regarding her ex-husband's opinion on this issue; however, as the applicant's wife pointed out in her letter, as a U.S. citizen she is not obligated to relocate to Mexico.

The evidence does not establish extreme hardship to the applicant's spouse if she remains in the United States. Counsel states that the applicant's spouse is experiencing financial hardship as a result of separation from the applicant. In her affidavit on appeal, the applicant's wife writes that her basic monthly expenses exceed her income by about \$100. Based on the records provided, this statement cannot be verified. Moreover, the record fails to establish that the applicant's wife's listed financial obligations are nondiscretionary or unalterable. The AAO notes that the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

Counsel also contends that the applicant's wife is experiencing extreme emotional hardship, including depression and daily crying spells. According to the applicant's wife, she felt obligated to leave their daughter, born in 2003, with the applicant in Mexico, because she cannot afford childcare in the United States. This situation causes her great anxiety and psychological pain. As noted above, the analysis in the instant application focuses not on the child's suffering but rather on how the child's situation aggravates the U.S. spouse's hardship. The record at hand does not establish that the applicant's wife's suffering goes beyond that which commonly affects other spouses of removed individuals.

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), defined extreme hardship as hardship that exceeds 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 endures hardship as a result of separation from the applicant. However, her situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. As the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States, the applicant is statutorily ineligible for relief. Hence, 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 § 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. See § 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.