invasion of personal privacy

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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

H4

JAN 3 2005

[redacted]

FILE: [redacted] Office: SEATTLE, WA Date:

IN RE: [redacted]

PETITION: 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 PETITIONER:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Seattle, Washington. 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 his last departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative filed by his father, (hereinafter, Mr.), a lawful permanent resident. The applicant seeks a waiver of inadmissibility in order to live in the United States with his father.

The District Director concluded that the applicant 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 District Director,* dated July 7, 2004.

On appeal, counsel contends that the applicant is entitled to a waiver of inadmissibility because Mr. will suffer extreme hardship if the applicant is refused admission to the United States. In support of the appeal, counsel submitted a brief, an affidavit from Mr letter documenting Mr. employment termination, receipts of money transferred to family members in Mexico, a letter concerning the health o daughter in Mexico, medical records for Mr. and a letter documenting Mr. on the job injury. The entire record was considered in rendering this decision.

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.

In the present application, the record indicates that the applicant entered the United States without inspection in 1989. On September 11, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). In October 2002, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart the United States on or after October 28, 2002 and to reenter on November 9, 2002.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until September 11, 2001, the date of his proper filing of the Form I-485. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his October 2002 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 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 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 deportation 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).

The concept of extreme hardship "is not . . .fixed and inflexible," and whether extreme hardship has been established is 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 (BIA) provided a list of non-exclusive factors to determine 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 the 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).

Each of the *Cervantes* factors listed above is analyzed in turn to determine if Mr will suffer extreme hardship. First examined is the financial impact on Mr. of the applicant's departure from the United States. On August 20, 2004, Mr. was terminated from his employment as a groom for Steve Bullock Racing Stables. He is currently unemployed. Mr. suffered an on the job back injury in 2003 that has required ongoing medical treatment (see below for discussion of Mr medical condition). Mr lives with the applicant.

Counsel provided no evidence that Mr. would be unable to support himself in Mexico if he accompanies the applicant there. Additionally, the applicant and Mr. have extensive family in Mexico who can potentially contribute support.

The next *Cervantes* factor examined is country conditions where the qualifying relative would relocate. Counsel submitted no evidence concerning country conditions in Mexico, thus the applicant has not demonstrated hardship related to country conditions in Mexico.

Another *Cervantes* factor is significant health conditions, particularly if appropriate medical care is unavailable in the country where the qualifying relative would relocate. Counsel described Mr as elderly and infirm, however, the record reflects that he is 52 years old and in reasonably good health. Mr. suffered a work-related back injury in 2003 that has resulted in back and neck pain. Mr has been diagnosed with bilateral shoulder tendonitis and thoracic lumbar strain, which are treatable conditions. In addition to receiving physical therapy, Mr been prescribed a muscle relaxant and painkillers. Counsel submitted no evidence addressing whether these conditions affect Mr ability to work. Mr. had an appointment with a physician who specializes in eye diseases, but the record contains no medical diagnosis of any serious eye condition. Counsel has provided no evidence addressing whether Mr could receive adequate medical care in Mexico. Mr. health concerns are common and presumably could be treated in Mexico.

The final *Cervantes* factor is family ties. Aside from the applicant, Mr. has no family members in the United States; therefore, moving to Mexico would not involve separating from his family. The applicant and Mr. have extensive family ties in Mexico, so moving there would unite the family.

Mr is a Mexican citizen who has lived most of his life in Mexico. He speaks Spanish and is familiar with Mexican culture. Accordingly, Mr. would move to Mexico with the applicant and adjust to conditions there without suffering extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that Mr. will face extreme hardship if the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a relative is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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), *Perez v. INS,* 96 F.3d 390 (9th 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his lawful permanent resident father as required under INA § 212(h), 8 U.S.C. § 1186(h). 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)(6)(C) 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.