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

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date: APR 24 2007
(CDJ 2002 770 053 RELATES)

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under §§ 212(a)(9)(B)(ii) and 212(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(ii) and 212(a)(1)(A)(iii)

ON BEHALF OF APPLICANT:

[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.

Ellen C. Johnson

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 is married to a citizen of the United States. The applicant 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. He was also found inadmissible pursuant to § 212(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 212(a)(1)(A)(iii), for having a physical or mental disorder and a history of potentially harmful associated behavior.

The applicant applied for a waiver of inadmissibility in order to reside in the United States with his wife and children. However, 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, as required by § 212(a)(9)(B) of the Act and failed to establish that he was eligible for a waiver under § 212(g)(3) of the Act.. The application was denied accordingly. On appeal, counsel asserts that the officer in charge effectively decided that the applicant's wife and children did not merit full consideration. Counsel claims that the applicant's spouse is experiencing extreme emotional and financial harm due to the separation from the applicant, and that she would also experience extreme hardship if he relocated to Mexico to live with the applicant. Counsel does not address any aspect of the waiver of the health grounds of inadmissibility.

On appeal, counsel submits a brief containing several factual errors. Counsel refers to the applicant as "Ms. [redacted]" and states that the applicant attempted to enter the United States "using her sister's visa." No other new documentation was submitted on appeal. The AAO has reviewed the entire body of evidence and concurs with the decision of the officer in charge.

The applicant's unlawful presence will be addressed first. 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 admission sometime in April 1999 and remained unlawfully until his departure in May 2003. The applicant, who is the beneficiary of an approved Petition for Alien Relative, is seeking admission within ten years of his May 2003 departure from the United States. The applicant is, therefore, 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 not considered in § 212(a)(9)(B)(v) waiver proceedings, except as it may affect the qualifying relative. 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.

Counsel asserts that the applicant's spouse would face extreme hardship if she remains in the United States without the applicant, as the latter supports her and their two children financially. Counsel also claims that the applicant's wife will suffer in the extreme, because she will have to care for their children by herself. Counsel contends that the separation from the applicant will be an additional factor causing the applicant's wife to suffer extreme emotional hardship. In her statement dated September 15, 2005, the applicant's wife wrote that the applicant is a good husband and father, and that his removal would lead to extreme hardship for her and their children.

Counsel also maintains that the applicant's wife will suffer if she relocates to Mexico, as her economic opportunities would be inferior to those available to her in the United States. Also, counsel mentions lessened

educational opportunities in Mexico for the applicant's children and that all the stress and suffering of the children and the family would cause the applicant's wife to suffer anxiety.

The record indicates that the applicant is currently employed in Mexico. There is no evidence that his wife currently suffers extreme financial hardship due to his absence from this country. Also, there is no evidence on the record establishing that the applicant's wife is unable to work outside the home, either in the United States or in Mexico, or that she is unable to secure any childcare assistance. Finally, there is no documentation in support of the claim that the applicant's wife's emotional suffering is now or will be extreme.

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. It is also noted 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).

The AAO recognizes that the applicant's wife is experiencing hardship as a result of separation from the applicant. However, the record does not demonstrate that her situation is different from that of other individuals separated as a result of removal or inadmissibility. Accordingly, the applicant has not proved that his spouse would suffer extreme hardship if his waiver request were to be denied.

On appeal, counsel fails to state any reason for overturning the finding regarding the applicant's inadmissibility under the health grounds described at § 212(a)(1)(A)(iii) of the Act. 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 § 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.