U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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JUN 01 2007

FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date:
(CDJ 2004 004 119 relates)

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:
[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, Chief
Administrative Appeals Office

DISCUSSION: The 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 and the application denied.

The record reflects that the applicant is a native and citizen of Mexico. The applicant 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 inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The officer in charge found the applicant had failed to establish that his wife would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 Application) was denied accordingly.

On appeal the applicant asserts, through counsel, that the cumulative hardship that his wife will suffer if he is denied admission into the United States, amounts to extreme hardship.

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 –
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> . . . .
>
> (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 illegally in December 1999. The applicant remained unlawfully in the United States, and he married a U.S. citizen on May 20, 2002. The applicant's wife filed a Form I-130, Petition for Alien Relative on the applicant's behalf on June 25, 2002. The Form I-130 was approved on March 26, 2004. The applicant departed the United States in February 2005. At that time, he was subject to section 212(a)(9)(B)(i)(II) of the Act unlawful presence inadmissibility provisions.

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 (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 is married to a U.S. citizen. The applicant's wife (Ms [redacted]s thus a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The AAO notes that the applicant's son is not a qualifying relative for section 212(a)(9)(B)(v) of the Act purposes. A U.S. citizen or lawful permanent resident child is not included as a qualifying relative for section 212(a)(9)(B)(v)

of the Act extreme hardship purposes. The hardship claims made with regard to the applicant's stepson shall therefore not be considered.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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. 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. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996). Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. *See Perez, supra. See also, Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. In *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. The U.S. Ninth Circuit Court of Appeals held further in *Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of extreme hardship.

The record contains the following evidence relating to Ms. [redacted] extreme hardship claim:

> An August 12, 2005, letter written by Ms [redacted] stating: 1) that the applicant is a father figure to her son, and that her son misses the applicant; 2) that she and her husband love and miss each other; and 3) that she relies on the applicant to take her to and from work and to help her financially.

The record contains no other evidence relating to hardship that M[redacted] would suffer if the applicant's Form I-601 application were denied. It is noted that the record contains three letters from the applicant's friends, attesting to the applicant's good character. The letters do not discuss hardship that Ms. [redacted] would suffer if the applicant were denied admission into the United States.

The AAO finds that the cumulative evidence contained in the record fails to establish that, if Ms [redacted] remained in the U.S., she would suffer financial or emotional hardship that goes beyond that ordinarily associated with removal. The record lacks evidence to corroborate Ms. [redacted] claim that the applicant helps support her financially, and the record lacks evidence to establish that the applicant's absence has caused Ms. [redacted] extreme financial hardship. In addition, the record lacks information or evidence to establish that Ms. [redacted] would suffer emotional or other hardship beyond that normally associated with removal, if the applicant's Form I-601 application is denied.

The applicant does not address whether Ms [redacted] would suffer extreme hardship if she moved to Mexico with the applicant, and the record contains no information or evidence regarding this issue. As noted above, however, the Board held in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. The U.S. Ninth Circuit Court of Appeals held further in *Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir. 1986), that hardship difficulties of readjustment to a different culture and environment did not rise to the level of extreme hardship. Upon review of the evidence in the record, the AAO finds that the applicant has also failed to establish that Ms [redacted] would suffer extreme hardship if she moved to Mexico with the applicant.

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 his wife would suffer extreme hardship if he 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 his burden of proof in the present matter. Accordingly, the appeal will be dismissed and the application denied.

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