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

H3

[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAY 12 2008

IN RE: [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 waiver application was denied by District Director, Mexico City, Mexico, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Mexico, was found inadmissible to the United States under 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 is the spouse of a United States citizen, and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States and rejoin his wife and children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on his wife, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant's wife contends that she will suffer extreme hardship if the applicant is required to remain in Mexico. 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:

> (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.

Regarding the applicant's grounds of inadmissibility, the record indicates that he entered the United States, *without inspection, in 1996. He returned to Mexico in October 2005.* The applicant is now seeking admission within ten years of his August 2005 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 having been unlawfully present in the United States for a period of more than one year. The applicant does not contest the District Director's finding of inadmissibility. Rather, he is filing for a waiver of his inadmissibility.

The record contains several references to the hardship that the applicant's United States citizen children will suffer if the applicant is refused admission into the United States. However, section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's wife is the only qualifying relative, and hardship that the applicant or the couple's children will face cannot be considered, except as it may affect the applicant's wife.

Court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined 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 set forth a list of non-exclusive factors relevant to determining 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 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 held in *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

> 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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

The applicant's wife is a thirty-six-year-old citizen of the United States. She and the applicant have been married since June 3, 2002 and have two children, both of whom are United States citizens.

The record contains three statements from the applicant's wife. In her undated letter that accompanied the initial waiver application, filed in 2005, she stated that the applicant is a hard worker; that the applicant has never been involved with the criminal system; that the family depends upon the economic support provided by the applicant; that she and the applicant work different shifts so that they can save money on daycare and provide a more stable economic situation; and that the couple are building a house to be finished in January 2006, and that she will not be able to afford both mortgage payments and daycare expenses.

In her January 3, 2007 letter, the applicant's wife states that she and her family are desperate without the applicant; that she has found herself in overwhelming debt; that she has had to obtain a second job in order to support herself and the children; that she has had to place the children in daycare; that her doctor is very concerned for her health; that she suffers from hypothyroidism, which has been exacerbated by the situation; that her doctor has had to adjust her medication twice; that the children keep asking for their father and she does not know what to tell them; that the only contact the children have with their father is via telephone, as it is too expensive to visit him in Mexico; and that she is in desperate need for the applicant's support.

In her February 24, 2007 letter, the applicant's wife states that she is in a heart-wrenching, difficult situation; that her hardship is compounded by her hypothyroidism, which transforms her hardship into an extreme and unbearable circumstance; that hypothyroidism is both chronic and incurable; that her hypothyroidism causes chronic fatigue, swelling, rashes, loss of concentration; forgetfulness, and depression; that her hypothyroidism must be carefully managed; that her medical condition affects her ability to work and care for the couple's children; that she is faced with hard, difficult, and overwhelming circumstances beyond her control; that her medical condition is affecting the children, as it affects her ability to provide for them; and that meet the most basic of her family's needs seems insurmountable.

The record also contains documentation from the applicant's wife's medical services providers, which demonstrates conclusively that she is being treated for hypothyroidism, and has been since at least 2000. The most recent medical report in the record, dated February 16, 2007, indicates that the applicant's wife suffers hoarseness, shortness of breath, coughing, fatigue, weakness, rash/itching, vertigo, and headaches. The physician's notes include a warning to not discontinue medication, as doing so could result in heart damage, psychosis, fatigue, and could result in permanent disability.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship

requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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).

In the instant case, the applicant is required to demonstrate that his wife would face extreme hardship in the event the applicant is required to remain in Mexico, regardless of whether she joins him in Mexico or remains in Tennessee without him. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

The AAO finds that the applicant's wife will suffer extreme hardship if she remains in Tennessee without the applicant. The record demonstrates that she is suffering from hypothyroidism, and that her diagnosis is adversely affecting her ability to function without the applicant. While the economic hardship of raising and supporting a family alone is not unique to the applicant's wife's case, when viewed in conjunction with her medical condition, the hardship cumulatively rises to the level of extreme as contemplated by statute and case law.

However, the record does not demonstrate that the applicant's wife would suffer extreme hardship if she were to join the applicant in Mexico. Diminished standards of living, separation from family, and cultural adjustment are to be expected in such a situation. No evidence was submitted, or claims made, to establish that she would experience medical, financial, or emotional hardship that would rise to the level of "extreme" as contemplated by statute and case law in such a situation. The record does not address whether her medical condition would likely worsen if she relocates to Mexico. As noted previously, the applicant must demonstrate that his wife would face extreme hardship whether she remains in the United States or relocates to Mexico. The record in this case addresses only the first prong; i.e., the hardship she faces in the United States. The applicant has not addressed why his wife cannot relocate to Mexico, and the AAO cannot make that case for him.

Accordingly, the waiver application may not be approved.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his wife would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

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