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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

#2
#6

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: FEB 16 2010

IN RE: [redacted]

APPLICATION: 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 APPLICANT:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and son.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director,* dated February 16, 2007.

On appeal, the applicant's wife states that she and the applicant's son are experiencing hardship due to the applicant's absence. *Statement from the Applicant's Wife*, dated March 2006.

The record contains statements from the applicant's wife; documentation of the applicant's wife's late payment on a bill; a copy of the applicant's son's birth certificate, and; information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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 resided in the United States without a legal immigration status from January 2000 until November 2003. Thus, he accrued over three years of unlawful presence in the United States. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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 applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 to a qualifying relative. 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.

On appeal, the applicant's wife states that she wishes for the applicant to return to the United States so that he can reside with her and their son as a family. *Statement from the Applicant's Wife* at 1. The applicant's wife explains that she feels very sad and lonely, and that her three-year-old son is growing up without his father. *Id.* at 1. She indicates that it is difficult for her to travel to Mexico due to financial constraints. *Id.* She explains that she works in a temporary job and she has had difficulty paying for her car and medical expenses. *Id.* She notes that she has received public assistance including Medicaid and food stamps, and she must purchase used clothing for her son. *Id.* at 2.

The applicant's wife describes her son's emotional state due to separation from the applicant, including sadness, crying, weight loss, and less interest in play. *Id.*

The applicant's wife previously stated that she was experiencing economic difficulty and unemployment in the applicant's absence. *Prior Statement from the Applicant's Wife,* dated February 3, 2006.

Upon review, the applicant has not shown that his wife will experience extreme hardship if he is prohibited from entering the United States. The applicant has not shown that his wife would encounter hardship should she relocate to Mexico. The applicant's wife noted that she has difficulty traveling to Mexico due to financial limitations. Yet, the applicant has not stated his wife's job skills, income, or financial resources. The applicant's wife provided that she has received public assistance, but the applicant has not submitted any documentation to support this assertion, or to show that his wife is unable to engage in employment in Mexico that is sufficient to meet her needs. Accordingly, the AAO lacks adequate evidence or explanation to conclude that the applicant's wife would endure significant economic challenges in Mexico.

The applicant has not stated any other elements of hardship his wife may encounter in Mexico. In the absence of clear assertions from the applicant, the AAO may not speculate regarding hardships the applicant's wife may face in Mexico. In proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Thus, the applicant has not shown that his wife would endure extreme hardship should she and her son relocate to Mexico to maintain family unity.

The applicant has not established that his wife will suffer extreme hardship should she remain in the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant's wife expressed that she is enduring emotional hardship due to separation from the applicant, and that she wishes for him to return to the United States so they can reside together as a family. However, the applicant has not distinguished his wife's psychological suffering from that which is commonly expected when spouses reside apart due to inadmissibility.

Federal court and administrative decisions have 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, *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), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond 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 record contains references to hardships experienced by the applicant's son. Direct hardship to an applicant's child is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation. The

AAO recognizes that the applicant's son faces significant emotional hardship due to being separated from the applicant. Yet, the applicant has not established that his son is suffering consequences that can be distinguished from those ordinarily experienced by children who reside apart from a parent due to inadmissibility. The applicant has not shown that his son's emotional hardship is elevating his wife's challenges to extreme hardship.

The applicant's wife stated that she is enduring economic hardship. As noted above, the applicant has not provided documentation of his wife's income or expenses. The applicant has not submitted any documentation to support that his wife has received Medicare benefits or food subsidies. The applicant provided a document from [redacted] ostensibly in connection with the automobile payment referenced by the applicant's wife, yet the document shows that the account was current as of February 22, 2007. *Account Statement from* [redacted] dated February 22, 2007. While the document reflects that the applicant's wife previously incurred a $15 late fee, it does not serve as evidence of present financial difficulty. The applicant's wife stated that she has had difficulty meeting her medical expenses, yet the applicant has not submitted any documentation to support that his wife has outstanding debt due to medical services. Thus, the applicant has not established that his wife lacks sufficient resources to meet her needs in his absence.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should he be prohibited from entering the United States and she remain. Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(a)(9)(B)(v) 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 regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.