

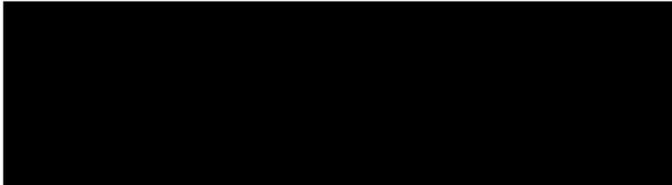
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**U.S. Citizenship  
and Immigration  
Services**

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FILE: [Redacted] Office: CIUDAD JUAREZ, MEXICO Date: **MAY 23 2007**  
(CDJ 2004 620 112 relates)

IN RE: Applicant: [Redacted]

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

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.

*Handwritten signature: Robert P. Wiemann*

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 was additionally found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for having committed a crime of moral turpitude. 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) and section 212(h) of the Act, 8 U.S.C. § 1182(h).

The officer in charge determined that the applicant had failed to establish that his wife would suffer extreme hardship if he 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 that he regrets his past actions, and that his wife and children will suffer extreme hardship if he is denied admission into the United States.

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 –

....

- (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 without authorization in December 1990. He remained unlawfully in the United States until November 2004. The applicant married a U.S. lawful permanent resident on February 23, 2001. The applicant's wife became a naturalized U.S. citizen on January 15, 2004. The applicant's wife filed a Form I-130, Petition for Alien Relative on the applicant's behalf on August 7, 2001. The Form I-130 was approved on April 9, 2004. The applicant departed the United States in November 2004. 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 applicant is married to a U.S. citizen. The applicant's wife ( [REDACTED] ) is thus a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The AAO notes that 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 children 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 (9<sup>th</sup> 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 v. INS*, *supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (9<sup>th</sup> 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 [REDACTED]'s extreme hardship claim:

A June 15, 2005, letter written by [REDACTED] stating that it is unthinkable for her to be separated from her husband, and that she and her two young children have moved to Mexico with the applicant. [REDACTED] states that she faces hardship in Mexico because she does not speak Spanish and is unable to work in Mexico. [REDACTED] states further that her home lacks basic services such as running water, electricity at night and sometimes gas. Ms. Aguilar states that her children have gotten sick, and that she fears for their future in Mexico. [REDACTED] additionally indicates that she fears crime in Mexico and she states that she is afraid to go to the store alone, and that she fears she will lose her belongings in the U.S. because she is unable to move her U.S. household by herself.

An October 22, 2005, letter written by [REDACTED] stating that she is a religious refugee from Belarus and that the Mexican population hates Christians, and sometimes kills Christians. [REDACTED] states that the Mexican population also does not like Americans, and she states that people with brown skin are discriminated against in Mexico, and that she fears for her children's future because their father has brown skin and they are of mixed race.

states that she lives in depression and fear in Mexico, and she asks that the applicant be allowed to return to the United States.

An October 22, 2005, letter written by the applicant stating in pertinent part that he regrets his past actions, that his life and ways have changed, and asking that his Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 application) be approved.

The record also contains letters attesting to the applicant's good character. The letters do not discuss hardship that would suffer if the applicant were denied admission into the United States.

Upon review of the cumulative evidence contained in the record, the AAO finds that the applicant has failed to establish that his wife would suffer hardship that goes beyond that ordinarily associated with removal or inadmissibility, if she remained in the U.S. without the applicant. states in her June 15, 2005, letter that it would be unthinkable for her to live separately from her husband. No other claims of hardship are made regarding her living separately from the applicant, and the record contains no evidence to indicate that would suffer extreme emotional, financial or other hardship if the applicant's Form I-601 application were denied and she remained in the United States.

The AAO finds that the applicant also failed to establish that his wife would suffer hardship beyond that normally experienced upon removal or inadmissibility, if the applicant were denied admission into the United States, and continued to live with him to Mexico. assertions that she fears for her family's safety due to their Christian religion, their skin color, and their American nationality are vague and uncorroborated by any independent evidence in the record. The AAO notes further the U.S. Ninth Circuit Court of Appeals holding in *Ramirez-Durazo v. INS, supra*, that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, does not rise to the level of extreme hardship.

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 for purposes of a section 212(a)(9)(B)(v) of the Act waiver of inadmissibility.

The applicant was also found to be inadmissible to the United States pursuant to section 212 (a)(2)(A)(i) of the Act. Section 212(a)(2)(A)(i) of the Act provides in pertinent part that:

[A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The Board held in pertinent part in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[I]n determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is

an element of an offense, we have found moral turpitude to be present. . . .

The record reflects that on April 28, 2000, the applicant was convicted of the offense of Failure to Perform Duties of Driver to Injured Persons (Hit and Run), in violation of Oregon State Statute § 811.705, a felony.<sup>1</sup>

Oregon State Statutes § 811.705 provides in pertinent part that:

- 1) A person commits the offense of failure to perform the duties of a driver to injured persons if the person is the driver of any vehicle involved in an accident that results in injury or death to any person and does not do all of the following:
  - a) Immediately stop the vehicle at the scene of the accident or as close thereto as possible . . . .
  - b) Remain at the scene of the accident until the driver has fulfilled all of the requirements under this subsection.
  - c) Give to the other driver or surviving passenger or any person not a passenger who is injured as a result of the accident the name and address of the driver and the registration number of the vehicle . . . .
  - . . . .
  - e) Render to any person injured in the accident reasonable assistance, including the conveying or the making of arrangements for the conveying of such person to a physician, surgeon or hospital for medical or surgical treatment . . . .
  - f) Remain at the scene of an accident until a police officer has arrived and has received the required information . . . .
- 2) a) Except as otherwise provided in paragraph (b) of this subsection, the offense described in this section . . . is a Class C felony . . . .
- b) Failure to perform the duties of a driver to injured persons is a Class B felony if a person suffers serious physical injury . . . or dies as a result of the accident.

The AAO finds, upon review of the elements of Oregon State Statute § 811.705, that the offense constitutes a crime involving moral turpitude.

Section 212(h) of the Act provides in pertinent part that:

The Attorney General [Secretary] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . .

- (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

In the present matter, the AAO finds that no purpose would be served in analyzing the applicant's eligibility for a waiver of inadmissibility under section 212(h) of the Act. Although a section 212(h) waiver of

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<sup>1</sup> The record reflects that the applicant has also been convicted of Driving under the Influence (DUI) in violation of Oregon State Statute § 813.010, and of two probation violations relating to his Hit and Run and DUI convictions.

inadmissibility additionally allows for hardship to the applicant's children to be considered, in the present matter, the applicant is, in any event, inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and as discussed above, he is ineligible for a waiver of inadmissibility under section 212(a)(9)(B)(v).

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.