

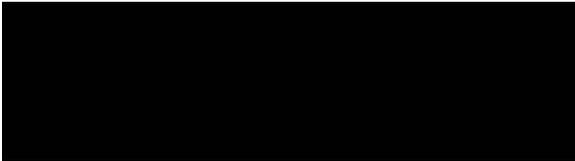
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date: AUG 11 2009

IN RE:



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).

John F. Grissom
Acting 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 enter the United States and reside with his U.S. citizen wife.

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 August 16, 2006.

On appeal, the applicant's wife asserts that she will suffer hardship should the applicant be prohibited from entering the United States. *Statement from the Applicant's Wife*, dated September 8, 2006.

The record contains statements from the applicant's wife; a copy of the applicant's marriage certificate; a copy of the applicant's wife's birth certificate; documentation of the applicant's compensation for employment, 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)(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 inspection in or about April 1999. He remained until he voluntarily departed in October 2005. Accordingly, the applicant accrued over six 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)(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 pursuant to section 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.

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. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's wife would possibly remain in the United States without the applicant. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

On appeal, the applicant's wife states that she has been married to the applicant for two years and that they have a good relationship. *Statement from the Applicant's Wife* at 1. She explains that the applicant was an excellent provider, as despite the fact that he did not have work authorization he always made sure they had food, shelter, and medical attention. *Id.* She states she has suffered episodes of extreme sadness, irritability, insomnia, loss of appetite, and headaches since she learned that the applicant will have to leave the United States. *Id.* The applicant's wife asserts that she will be forced out of her home and she will be homeless if the applicant is unable to reside in the United States. *Id.* at 2. She notes that the applicant does not have employment options in Mexico, and she does not earn sufficient income to support them both. *Id.* She states that separation will strain their marriage, possibly resulting in divorce. *Id.*

The applicant's wife asserts that she will endure hardship should she relocate to Mexico, as there is a high rate of crime and corruption in law enforcement. *Id.* She explains that she would endure hardship due to the need to apply for residency in Mexico. *Id.* She suggests that she and the applicant will not have access to medical services that they have in the United States. *Id.*

The applicant's wife previously indicated that her education has been interrupted due to the applicant's immigration difficulties, as she has had to work full-time to support herself. *Prior Statement from the Applicant's Wife*, dated October 25, 2005.

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from residing in the United States. The applicant's wife expressed that she does not wish to be separated from the applicant and that she'll experience hardship if she remains in the United States. Yet, the applicant has not distinguished his wife's psychological suffering from that which is commonly expected when spouses are separated due to inadmissibility. U.S. court 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 applicant's wife asserted that she will experience economic hardship without the applicant's assistance. Yet, the applicant has not submitted an account of his wife's income or expenses such that the AAO can determine if she can meet her needs alone. Nor has the applicant established that he is unable to work in Mexico. The applicant's wife indicated that she has had to postpone her education to work to support herself, yet the applicant has not provided any evidence to show that his wife has participated in a school program. Nor has the applicant shown that his wife is unable to obtain financial aid to help her meet any shortfall. The record does not support the applicant's wife's contention that she'll be homeless should the applicant reside outside the United States.

Based on the foregoing, the applicant has not shown that his wife will suffer extreme hardship should she remain in the United States without him.

The applicant has not shown that his wife will suffer extreme hardship should she relocate to Mexico. The applicant's wife stated that she fears prevalent crime and corrupt police officers in Mexico. However, the applicant has not provided any evidence or reports to support this contention. Nor has the applicant indicated where he and his wife would reside, or whether he has experienced difficulty due to crime in Mexico. The applicant has not established that his wife would be targeted for crime, or that all individuals residing in Mexico face a risk of crime that constitutes extreme hardship.

As noted above, the applicant has not shown that he is unable to engage in employment in Mexico that is sufficient to meet his needs. Nor has the applicant shown that his wife would be unable to secure suitable employment or educational opportunities.

The applicant's wife has not stated whether she has other family in the United States, thus the applicant has not shown that his wife would be separated from other family members should she relocate abroad.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should she join him in Mexico. Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife. 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 for application for 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.