



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: CIUDAD JUAREZ Date:
CDJ 2005 504 528

DEC 02 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 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)

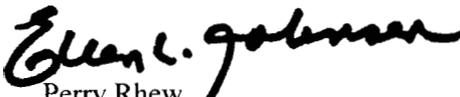
ON BEHALF OF APPLICANT:

[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.

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 Officer in Charge, Ciudad Juarez, Mexico, and 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 resided in the United States from 1997, when he entered without inspection, to February 2006, when he returned to Mexico. He was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. He 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 reside with his wife and children.

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer in Charge* dated March 13, 2007.¹

On appeal, the counsel for the applicant asserts that the applicant's wife would suffer extreme hardship if the applicant were denied admission to the United States due to her age and length of residence and family ties in the United States. *See Counsel's Brief in Support of Appeal* at 5. Specifically, counsel states that the applicant would suffer hardship if she relocated to Mexico because she would be separated from her three adult children and her granddaughter, all of whom reside in California. *Brief* at 5-6. Counsel claims that the applicant's wife would also suffer hardship in Mexico due to poor economic conditions and inadequate medical care there and would not receive financial assistance from her relatives there because they are having difficulty supporting their own families. *Brief* at 7-8. Counsel additionally states that the applicant and his wife have forged a loving and strong bond during their five-year relationship and his wife is suffering from symptoms of major depression due to their separation, and would also suffer financial hardship from having to support two households. *Brief* at 5. In support of the appeal counsel submitted declarations from the applicant's wife and copies of the birth certificates of her U.S. citizen children. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –

¹ The district director also found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. On December 10, 1998 the applicant pled guilty to forgery of check and burglary. On appeal the applicant does not contest this finding. As this decision finds the applicant ineligible for a waiver under section 212(a)(9)(B)(v) of the Act, the AAO finds no purpose in discussing his eligibility for a waiver under section 212(h) of the Act.

- (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 Secretary, 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.

A waiver of the bar to admission resulting from violation of 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 citizen or lawfully resident spouse or parent of the applicant. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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 addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, 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 the present case, the record reflects that the applicant is a thirty-three year-old native and citizen of Mexico who resided in the United States from 1997, when he entered without inspection, to February

2006, when he returned to Mexico. The applicant's wife is a fifty-one year-old native and citizen of the United States whom the applicant married on June 21, 2003. The applicant currently resides in Mexico and his wife resides in Garden Grove, California.

Counsel asserts that the applicant's wife, who was eighteen years old when she left Mexico in 1976 to reside in the United States, would suffer extreme hardship in Mexico. The applicant's wife states that she has firmly established her life, family and future in the United States and that to be separated from her three adult children and her granddaughter "would destroy [her] immediate family unit" and would cause her great sadness. *See Declaration from* [REDACTED] dated April 4, 2007. She further states that if she moved to Mexico her mother and siblings could not support her because they can barely support their own families and they live a great distance from the applicant's home in Michoacán, and she would have difficulty finding employment due to her age, lack of work experience in Mexico, and the scarcity of jobs there. *See Declaration from* [REDACTED] dated April 4, 2007. She further states that even if she were able to find work she would earn very little and would be unable to support herself, and would be unable to afford medical insurance or pay the costs of medical services should she need them. *Id.*

The applicant's wife states that she would suffer extreme hardship if she relocated to Mexico due to separation from her family members in the United States and economic conditions in Mexico. No documentation was submitted by the applicant's wife concerning her family ties to in the United States, her health, or conditions in Mexico to support her assertions that she would suffer emotional, physical, and economic hardship if she were to relocate to Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's wife states that after her first marriage ended in divorce in 1999 she did not think love or marriage was possible for her until meeting the applicant in 2001. *See Declaration from* [REDACTED] dated April 4, 2007. She further states that she has been very lonely since the applicant left the United States and fears that the situation could ruin their marriage. *Id.* No additional evidence, such as documentation concerning her mental health or the potential effects of separation from the applicant, was submitted to support the assertion that the applicant's wife is suffering from emotional or psychological hardship. The evidence on the record does not establish that the emotional effects of separation from the applicant are more serious than the type of hardship a family member would normally suffer when faced with the prospect of a spouse's removal or exclusion. Although the depth of her distress over being separated from the applicant is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

Based on the evidence on the record, it appears that any emotional, physical, or financial hardship the applicant's wife would experience appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.