



U.S. Citizenship
and Immigration
Services

H₂

[REDACTED]

FILE:

[REDACTED]

Office: MEXICO CITY (CIUDAD JUAREZ) Date:

DEC 03 2009

IN RE:

[REDACTED]

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

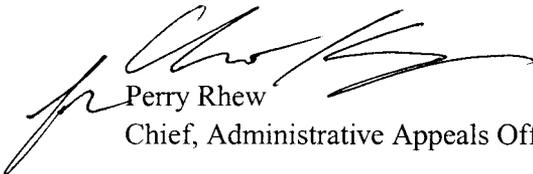
ON BEHALF OF APPLICANT:

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 record reflects that 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 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 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 reside with his lawful permanent resident father in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated March 30, 2007.

The record contains, *inter alia*: a letter from the applicant; a copy of the birth certificate of the applicant and his wife's U.S. citizen son; copies of receipts for a hospital bill and rent; a letter from the applicant's parents; medical documentation; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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.

In this case, the district director found, and the applicant does not contest, that the applicant overstayed his authorized stay beginning on March 20, 2005, and remained until April 16, 2006. The applicant accrued unlawful presence for more than one year. He now seeks admission within ten years of his 2006 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, the applicant states he has a U.S. citizen son and believes he can give his son a better life by residing with him in the United States. The applicant contends he is a hard worker and will not be a burden to the United States. In addition, the applicant states he needs to help his parents because "life in California is not very easy every body needs to work and ever since [he] left the United States they have suffered greatly, because [he is] no longer helping them." *Letter from* [REDACTED] dated April 19, 2007.

A letter from the applicant's parents states that the applicant "has become accustomed to the U.S. way of life and absorbed the culture." The applicant's parents contend that if the applicant's waiver application were denied, his U.S. citizen child would be greatly affected. Moreover, the applicant's parents state they are very worried about this situation and their diabetes has become very unstable. They state they "are having a hard time controlling [their] sugar and have become hypertensive." They claim that if the applicant must stay in Mexico, they will worry about him and his child. *Letter from* [REDACTED] and [REDACTED], dated May 11, 2006.

After a careful review of the record, there is insufficient evidence to show that the applicant's lawful permanent resident father has suffered or will suffer extreme hardship if the applicant's waiver application were denied. Although the AAO recognizes the applicant's father has suffered hardship as a result of his son's departure from the United States and is sympathetic to the family's circumstances, the Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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). Significantly, the applicant's father does not discuss the possibility of moving back to Mexico, where he was born, to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him.

Regarding the applicant's financial hardship claim, aside from copies of receipts for a hospital bill and rent, the applicant did not submit evidence such as tax documents, evidence from the applicant's previous employer verifying his past employment, or other documentation regarding his employment and wages. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In any event, even assuming some economic hardship, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *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).

Furthermore, although the record contains medical documentation for the applicant's parents, the documents are written in Spanish, have not been translated into English, and consequently cannot be considered. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father caused by the applicant's inadmissibility to the United States. 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)(v) 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.