



U.S. Citizenship  
and Immigration  
Services

H<sub>2</sub>

[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)

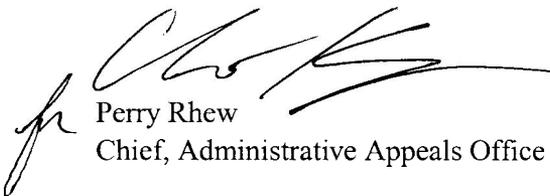
ON BEHALF OF APPLICANT:

[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, 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 wife and children in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Officer in Charge*, dated January 5, 2007.

The record contains, *inter alia*: a marriage certificate of the applicant and his wife, indicating they were married on March 15, 1997; an affidavit and a letter from a physician; 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 record shows, and counsel concedes, that the applicant entered the United States without inspection in 1999 or 2000 and remained until 2003. *Brief in Support of Appeal to Denial of Application for Waiver of Grounds of Excludability (I-601)* at 1-2, undated. The applicant accrued unlawful presence for over one year. He now seeks admission within ten years of his 2003 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.<sup>1</sup>

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's wife, [REDACTED], submitted an affidavit that was dated in January 2007. In this affidavit, [REDACTED] states that she and her husband are extremely close and rely on each other for everything. She states that they have four U.S. citizen children, ranging in age from five months to eight years old. [REDACTED] contends she cannot support her children without her husband's economic support. In addition, [REDACTED] states her youngest son, [REDACTED], has bronchitis and she fears she will not be able to adequately care for him alone if his situation worsens. Furthermore, [REDACTED] states she herself needs surgery to lift her bladder, uterus, and rectum which have been dropping. She states she does not have anyone who can care for her children while she recovers from surgery. [REDACTED] further states she does not want to go to Mexico for the surgery because her doctor is in the United States and health care in the United States is far superior than in Mexico. She also states she does not believe her husband will be able to make enough money in Mexico to support himself as well as her and the children in the United States. She states that they have bought a house together and own a nice truck. *Affidavit of* [REDACTED] dated January 30, 2007.

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<sup>1</sup> U.S. Citizenship and Immigration Services (USCIS) records show that the applicant was admitted to the United States as a V-1 nonimmigrant on May 22, 2003. The applicant extended his V-1 nonimmigrant status until July 22, 2007.

The record also contains a letter from [REDACTED] that she wrote in March 2006. In this letter, [REDACTED] swore under penalty of perjury that she would suffer extreme hardship if the applicant's waiver application were denied "because we do not have any kids we just have each other." *Letter from [REDACTED]* dated March 31, 2006.

A letter from [REDACTED] physician states that [REDACTED] has pelvic prolapse which requires surgery. The physician states that her recovery will be six weeks if no complications arise. *Letter from [REDACTED]* dated January 26, 2007. In addition, a note from [REDACTED] doctor states that [REDACTED] received oral antibiotics for mild bronchitis. *Prescription (illegible signature)*, dated January 19, 2007.

After a careful review of the record evidence, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if her husband's waiver application were denied. As an initial matter, the AAO finds that the record shows [REDACTED] misrepresented her initial claim by stating she and the applicant did not have any children together. *Letter from [REDACTED]* dated March 31, 2006. It was not until this appeal that [REDACTED] claimed she and the applicant have four U.S. citizen children together and submitted copies of their birth certificates.

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States. However, there is insufficient evidence in the record to show extreme hardship to the applicant's wife since the applicant's departure. Significantly, aside from stating she does not want to have surgery in Mexico, [REDACTED] does not discuss the possibility of moving back to Mexico, where she was born, to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her. If [REDACTED] decides to remain in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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).

With respect to [REDACTED] surgery, her physician's letter does not address with any **specificity** the prognosis or severity of [REDACTED] condition. The letter does not describe what [REDACTED] recovery will entail and does not state what type of assistance [REDACTED] may require after surgery, if any. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed. To the extent the record contains evidence the couple's son, [REDACTED] has mild bronchitis, there is no suggestion in the record that he requires any treatment other than the oral antibiotic he was prescribed.

Finally, to the extent [REDACTED] makes a financial hardship claim, the AAO notes that the only relevant document submitted was a statement for a \$67,062 loan in the applicant's name for which an automatic payment of \$635 was made on May 19, 2006. The loan statement does not indicate that the applicant or his wife have defaulted on the loan or otherwise demonstrate that the applicant's wife faces extreme financial hardship. Even assuming some financial difficulty, 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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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.