

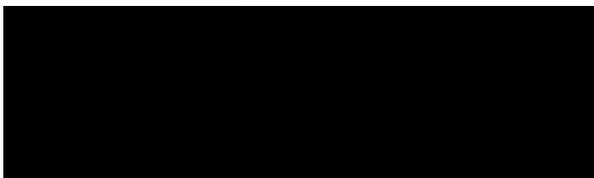


U.S. Citizenship
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Services

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FILE: [REDACTED]
(CDJ 2004 772 001)

Office: MEXICO CITY (CIUDAD JUAREZ) Date: NOV 05 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, 8 U.S.C. § 1182(a)(9)(B)(v)

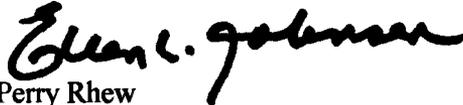
ON BEHALF OF APPLICANT:

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, 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 December 1999, when he entered without inspection, to March 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 district director 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 District Director* dated January 5, 2007.

On appeal, the applicant's wife asserts that she and her children miss the applicant very much and are very sad that he is not with them. *See Notice of Appeal to the AAO (Form I-290B)*. The applicant's wife further states that she cannot work full-time because she has to take care of the children, and the applicant's mother is too sick to care for the children while she goes to work. *See Notice of Appeal to the AAO*. In support of the waiver application and appeal the applicant submitted a letter from his wife, medical records for his mother, and a letter from the applicant's mother's physician. 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 –
 - (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.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

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 year-old native and citizen of Mexico who resided in the United States from December 1999, when he entered the country without inspection, to March 2006, when he returned to Mexico. The applicant's wife is a forty-one year-old native of Mexico and citizen of the United States whom the applicant married on October 18, 2003. The applicant currently resides in Mexico and his wife resides in La Puente, California with their two children.

The applicant's wife states that she and her children are suffering emotional hardship due to separation from the applicant and further states that she cannot work full-time because she must care for her children. She additionally states that the applicant's mother is unable to assist in the care of

her children while she is working because of her medical condition. In support of these assertions the applicant submitted medical records, a letter from his mother's doctor, and a letter from his wife. The letter from his wife is in Spanish, and is not translated. *See* 8 C.F.R. § 103.2(a)(3), which states:

(3) Translations. Any document containing foreign language submitted to the Service [now U. S. Citizenship and Immigration Services] shall 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.

Because the letter from the applicant's wife is not translated it cannot be considered as evidence in support of the waiver application. No additional evidence was submitted to support the assertions that the applicant's wife and children are suffering from emotional, psychological, or financial hardship due to separation from the applicant. 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 evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of a spouse or parent's removal or exclusion. Although the depth of their 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.

The record also includes documentation related to the applicant's mother. The record does not indicate whether the applicant's mother is a U.S. Citizen or Lawful Permanent Resident, and it is therefore not clear whether she is a qualifying relative for the waiver. Further, even if extreme hardship to the applicant's mother could be considered, the documentation on the record, which includes a brief form letter from her doctor stating that she has a history of diabetes, hypertension, hyperlipidemia, and renal insufficiency, but no further detail about the seriousness of her condition, is insufficient to establish that she suffers from a significant medical condition that would result in extreme hardship if the applicant is denied admission. Medical records submitted with the waiver application also fail to specify her condition or any need for treatment or assistance. Without more detailed information about the current condition of the applicant's mother or the exact nature and long-term prognosis of her condition, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed.

Based on the evidence on the record, it appears that any emotional or financial hardship the applicant's wife or mother is experiencing 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). No claim was made that the applicant's wife or mother would suffer extreme hardship if they relocated to Mexico with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's wife or mother would suffer extreme hardship if they moved to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, 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 sections 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.