

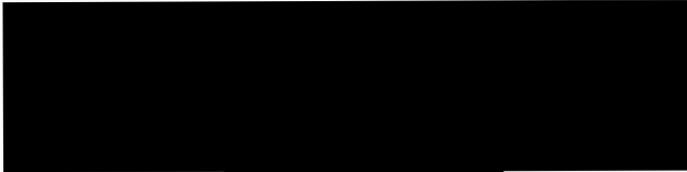


U.S. Citizenship
and Immigration
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date:

IN RE: [REDACTED]
(CDJ 2004 779 497)

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 February 1991, when he entered without inspection to August 2005, 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 December 6, 2006.

On appeal, the applicant's wife states that she and her children are suffering hardship due to separation from the applicant, including emotional and financial hardship. *See Letter from [REDACTED] dated December 28, 2006.* The applicant's wife claims that her two sons as well as the applicant's daughter from a previous relationship miss him very much, and she has suffered emotional turmoil during the time they have been separated and is trying her best to raise her two boys on her own. *See Letter from [REDACTED]* She further claims that she is suffering financial hardship due to the loss of the applicant's income, is now receiving public benefits they would not need if the applicant were in the United States, and has incurred significant debt as a result of travel to Tijuana, Mexico to visit the applicant. *See Letter from [REDACTED]* In support of the waiver application and appeal the applicant submitted a letter from his wife, letters from friends and relatives, copies of documentation related to the child support he was paying for his daughter, pay stubs and other financial documents for the applicant's wife, copies of family photographs, and receipts for travel to Mexico. 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-five year-old native and citizen of Mexico who resided in the United States from February 1991, when he entered without inspection, to August 2005, when he returned to Mexico. The applicant's wife is a twenty-eight year-old native of Mexico and citizen of the United States whom the applicant married on November 15, 2003. The

applicant currently resides in Mexico and his wife resides in Tustin, 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 her children are lacking a father figure as well as a bond with their sister, who is the applicant's daughter from a previous relationship. *See Letter from [REDACTED] dated December 28, 2006.* 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 applicant's wife states that she is suffering financial hardship due to the loss of the applicant's income and from the cost of traveling to Mexico with her children to visit the applicant. She states that in 2005 she and the applicant earned a total of over \$50,000 and that in 2006 she earned slightly less than \$20,000, and she submitted a copy of December 2006 pay stubs to support this assertion. *See Letter from [REDACTED] dated December 28, 2006.* She states that she only wishes that they could afford to make these trips more frequently so their children would not miss their father so much, but that they really cannot afford the travel and have indebted themselves to the point where she struggles to make the minimum payments on her credit cards. *See Letter from [REDACTED]* The applicant's wife further states that the average cost of one trip to Tijuana, Mexico is about \$1000 and the cost is \$1500 if they fly to Mexico City, where the applicant now resides. In support of this assertion, the applicant's wife submitted copies of itineraries and credit card statements. No documentation was submitted concerning the applicant's income when he resided in the United States, but the pay stub submitted does indicate that the applicant's wife is earning about \$20,000 per year. It therefore appears that the loss of the applicant's income and the cost of travel to Mexico have had a negative effect on the financial situation of the applicant's wife. The evidence on the record is insufficient to establish, however, that the financial impact would be beyond the common result of removal or inadmissibility such that it would rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

Based on the evidence on the record, it appears that any emotional or financial hardship the applicant's wife 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 would suffer extreme hardship if she relocated to Mexico with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's wife would suffer extreme hardship if she 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.