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NOV 19 2009

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
(CDJ 2004 717 128 relates)

IN RE: [REDACTED]

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

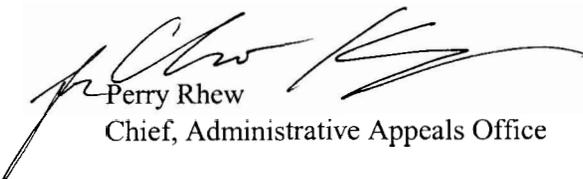
ON BEHALF OF APPLICANT:

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 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and children.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated November 14, 2006.

On appeal, the applicant asserts that his wife will experience extreme hardship if he is prohibited from entering the United States. *Statement from the Applicant on Form I-290B*, dated December 5, 2006.

The record contains a statement from the applicant; copies of the applicant's sons' birth certificates; a copy of the applicant's marriage certificate; a copy of the applicant's wife's naturalization certificate; a psychological evaluation of the applicant's wife; copies of photographs of the applicant's family; a statement from the applicant's wife, and; documentation regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

The record reflects that the applicant resided in the United States without a legal immigration status from 1993 until November 2005. Accordingly, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until November 2005, totaling over seven years. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant does not contest his inadmissibility on appeal.

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. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

On appeal, the applicant asserts that his wife and children will experience extreme psychological and physical hardship if he is prohibited from entering the United States. *Statement from the Applicant on Form I-290B* at 1. The applicant notes that his wife has become very ill since he departed the United States. *Id.* He contends that his wife is experiencing financial hardship. *Id.* The applicant states that he is unable to see his wife and children, and that there is no one in the United States to care for his family. *Id.*

The applicant's wife stated that she and the applicant have been married since May 4, 2002 and they have three United States citizen children together. *Statement from the Applicant's Wife*, undated. She indicated that she has been under severe stress and depression. *Id.* at 1. She stated that she and her children cannot have a happy life without the applicant. *Id.* She expressed that she is close with the applicant, and that he is a good father and husband. *Id.* She commented that all of the applicant's family members are in the United States. *Id.*

The applicant provided a psychological evaluation of his wife conducted by a marriage and family therapist, [REDACTED] Ms. [REDACTED] reported that the applicant's wife has developed many psychological symptoms as a result of separation from the applicant. *Report from* [REDACTED]

dated November 29, 2006. stated that the applicant's wife has endured difficulty acting as a single household provider, and that the applicant's children have been extremely distressed over the applicant's absence. *Id.* at 2. noted that the applicant's two younger children have been encountering difficulty at school and with personal habits due to separation from the applicant. *Id.* indicated that the applicant's wife reported numerous symptoms such as a loss of energy and fatigue, sleep pattern disturbance and nightmares, anxiety and nervousness, withdrawal, depression, fear and hypervigilance, lack of appetite, stomachaches and headaches due to anxiety, hair loss and acne due to stress, and poor concentration. *Id.* at 3-4. concluded that the applicant's wife exhibits major depressive disorder, single episode, and generalized anxiety disorder. *Id.* at 4. asserted that all of the applicant's family members will deteriorate if they are forced to live apart from each other. *Id.* at 6.

indicated that the applicant's wife is unable to earn sufficient income to support her household. *Id.* at 2. She stated that the applicant does not earn enough from temporary employment in Mexico to help his wife. *Id.*

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The applicant has not asserted or shown that his wife will experience extreme hardship if she relocates to Mexico to join him. The record clearly shows that the applicant's wife and children are experiencing emotional hardship due to separation, yet they would not encounter this challenge if they reside together abroad. indicated that the applicant's wife is encountering financial difficulty in the applicant's absence, and that the applicant has been unable to earn enough income to support his family through temporary employment in Mexico. Yet, the applicant has not provided adequate explanation or documentation to show that he and his family would suffer significant economic hardship should they establish a more permanent residence and employment in Mexico. As a native and citizen of Mexico, it is likely that the applicant's wife is familiar with Mexican culture and the Spanish language such that she can engage in employment there. It is noted that the applicant has not indicated whether he or his wife have family members or associates in Mexico who could assist them.

In the absence of clear assertions from the applicant, the AAO may not speculate as to the hardships the applicant's wife would experience. In proceedings for an application for a waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The record does not show by a preponderance of the evidence that the applicant's wife would suffer extreme hardship should she relocate to Mexico.

The applicant has provided evidence to show that his wife is experiencing significant hardship residing in the United States without him. The AAO acknowledges that acting as a single parent for three children often involves substantial challenge and emotional difficulty, as well as economic challenges. Yet, the applicant has not provided any evidence to show his wife's current employment, income, or economic needs. The AAO has examined the report from carefully, and observes that the applicant's wife is exhibiting symptoms of psychological hardship. asserted that all of the applicant's family members will deteriorate if they are forced to

live apart from each other, yet as noted above, the applicant has not shown that his wife and children may not relocate to Mexico to maintain family unity. In order to establish eligibility for consideration for a waiver, the applicant must show that denial of the present waiver application “would result in extreme hardship” to his wife. Section 212(a)(9)(B)(v) of the Act. As the applicant has not submitted sufficient evidence or explanation to show that his wife would encounter extreme hardship should she and their children relocate to Mexico, he has not shown that denial of the present waiver application will cause her extreme hardship. *Id.*

The record contains references to hardships experienced by the applicant’s children. Direct hardship to an applicant’s children is not a basis for a waiver under Section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant’s children, it is reasonable to expect that the children’s emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation. The AAO recognizes that the applicant’s children face significant emotional hardship due to being separated from the applicant. Yet, the applicant has not established that they are suffering consequences that can be distinguished from those ordinarily experienced. The applicant has not shown that his children’s emotional hardship is elevating his wife’s challenges to extreme hardship. For example, although [REDACTED] briefly states that the applicant’s younger sons are having problems at school, the applicant submitted no school records; statements from his sons’ teachers, school counselors or doctors to demonstrate the magnitude of their problems and the increased hardship faced by their mother as a result. Further, as discussed above, the applicant has not shown that his wife and children may not relocate to Mexico, thus alleviating the emotional hardship due to separation from the applicant.

Based on the foregoing, the applicant has not established that a qualifying relative will experience extreme hardship should the present waiver application be denied. 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.

As noted above, in proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.