

identifying data deleted to
prevent disclosure of unwarranted
invasion of personal privacy



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H₂



FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: NOV 27 2009
(CDJ 2004 829 011 relates)

IN RE: Applicant: [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:



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, Mexico, and 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 Immigration and Nationality Act (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 and seeking readmission within 10 years of his last departure from the United States. The record indicates that the applicant is married to a naturalized United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 in the United States with his United States citizen wife and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 22, 2006.

On appeal, the applicant, through counsel, asserts that the District Director "erred in not granting relief, under the statute and regulations. The record as presented and any additional documents provided on appeal, clearly establish that the spouse of the [applicant] will suffer extreme hardship if the [applicant] is not granted an immigrant visa." *Form I-290B*, filed October 24, 2006.

The record includes, but is not limited to, counsel's brief, declarations from the applicant's wife and her parents, and medical documents regarding the applicant's mother-in-law's medical conditions. 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:

(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 [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 AAO notes that the record contains references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant entered the United States in August 1995. On May 25, 2004, the applicant's United States citizen wife filed a Form I-130. On August 7, 2004, the applicant's Form I-130 was approved. In December 2005, the applicant departed the United States. On December 27, 2005, the applicant filed a Form I-601. On September 22, 2006, the District Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until December 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his December 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel states that “[w]ith the departure of [the applicant], there has been a severe financial and emotional toll on the applicant’s USC wife.” *Appeal Brief*, page 3, dated December 19, 2006. In a declaration dated December 16, 2006, the applicant’s mother-in-law states she has seen her daughter and grandchildren struggle without the applicant. In a declaration dated December 6, 2005, the applicant’s wife states the thought of being a single parent causes her stress and worry, and she has become depressed. The AAO notes that there are no professional psychological evaluations for the AAO to review to determine how the separation from the applicant is affecting the applicant’s wife mentally, emotionally, and/or psychologically. Counsel states the applicant’s wife had to quit her full-time job to help care for her parents and the children. *Appeal Brief, supra* at 3. The AAO notes that the applicant’s wife works at a convenience store, and it has not been established that she has no transferable skills that would aid her in obtaining a job in Mexico. Additionally, the AAO notes that the applicant’s wife is a native of Mexico who speaks Spanish, and it has not been established that she has no family ties in Mexico.

The AAO notes that medical documentation in the record establishes that the applicant’s mother-in-law suffers from several medical conditions, including hyperlipidemia, pain in her lower extremities, arthritis, and diabetic neuropathy. Additionally, counsel states that the applicant’s father-in-law suffers from severe hearing loss and he has poor eyesight. *Id.* at 2. Counsel states that “[t]hese conditions all require medication, home supervision and frequent doctor’s visits.... These are duties which [the applicant’s wife] and [the applicant] used to perform together.” *Id.* The AAO notes that other than statements from counsel, the applicant’s wife, and her parents, there is nothing from a doctor indicating exactly what the medical issues are, any prognosis or what assistance is needed and/or given by the applicant’s wife. The AAO notes that there was no documentation submitted establishing that the applicant’s parents-in-law could not receive treatment for their medical conditions in Mexico or that they have to remain in the United States to receive their medical treatments. Additionally, the AAO notes that the applicant’s parents-in-law are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act. In the applicant’s wife’s declaration, she claims her children would not have the same opportunities in Mexico that they have in the United States. The AAO notes that the applicant’s children may experience some hardship in relocating to Mexico; however, they are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined him in Mexico.

In addition, the applicant does not establish extreme hardship to his wife if she remains in the United States, in close proximity to her family and maintaining her employment. Counsel states that “[d]ue to the health conditions of her parents, it also not a possibility for [the applicant’s wife] to move to Mexico with her children to be with [the applicant].” *Appeal Brief, supra* at 6. As a United States citizen, the applicant’s wife is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. Counsel states that the applicant’s wife “has become not only the sole financial provider for the family, but also the sole home-maker as well as care-giver.” *Id.* at 2. Counsel states that the applicant “helped care for his two children” “while [the applicant’s wife] was at work or taking her mother to a medical appointment.” *Id.* The AAO notes that it has not been established that the applicant’s spouse will be unable to provide or obtain adequate care for her children in the applicant’s absence or that this particular hardship is atypical of individuals separated as a consequence

of removal or inadmissibility. Additionally, the AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States.

United States court decisions have repeatedly 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 Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals held further that the 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.

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