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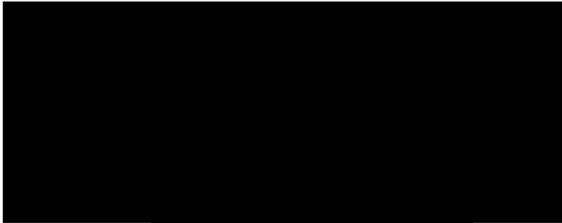
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



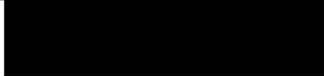
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FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date: NOV 30 2009

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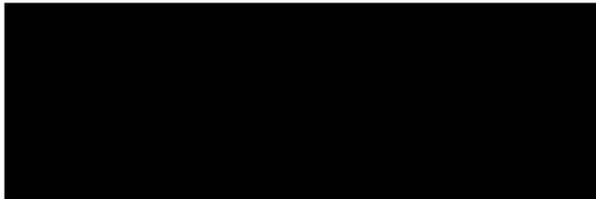
Applicant:



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 United States citizen and he is the beneficiary of an approved Petition for Alien Fiancé(e) (Form I-129F). 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 March 20, 2007.

On appeal, the applicant, through counsel, claims that the applicant's United States citizen wife and children are suffering extreme hardship. *Appeal Brief*, dated April 11, 2007.

The record includes, but is not limited to, counsel's appeal brief, an affidavit from the applicant's wife, and a letter from [REDACTED] regarding the applicant's wife's hearing loss. 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 several 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 wife.

In the present application, the record indicates that the applicant initially entered the United States in October 1988 without inspection. On November 23, 1998, the applicant was apprehended by the border patrol at the Interstate I-10 checkpoint in route to Deming, New Mexico. On the same date, a Notice to Appear (NTA) was issued against the applicant. On April 9, 1999, an immigration judge ordered the applicant removed to Mexico. On May 11, 1999, the applicant, through counsel, filed an appeal of the immigration judge's decision to the Board of Immigration Appeals (Board). On July 6, 1999, the applicant was convicted of assault that causes bodily injury to a family member, and was sentenced to eleven (11) months probation and court costs and fees.<sup>1</sup> On April 19, 2002, the Board affirmed the immigration judge's decision, and a Warrant of Removal/Deportation (Form I-205) was issued. On August 19, 2002, the applicant, through counsel, filed a motion to reopen the Board's decision. On April 17, 2003, the Board reissued the decision of April 19, 2002, and another Form I-205 was issued. On February 12, 2004, the applicant was removed from the United States. On September 13, 2005, the applicant's United States citizen wife filed a Form I-129F on behalf of the applicant.<sup>2</sup> On November 10, 2005, the applicant's Form I-129F was approved. On March 16, 2006, the applicant filed a Form I-601. On March 20, 2007, the District Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and he 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 February 12, 2004, the date the applicant was removed from the United States. The applicant is attempting to seek admission into the United States within 10 years of his February 12, 2004 removal 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.

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<sup>1</sup> The AAO notes that the applicant may also be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude; however, the record does not contain a complete record of conviction. Therefore, the AAO will only address the applicant's inadmissibility under section 212(a)(9)(B)(II) of the Act.

<sup>2</sup> The AAO notes that on November 27, 1986, the applicant married [REDACTED], in Mexico, and there is no documentation in the record that the applicant divorced [REDACTED]. Additionally, the record does not contain the marriage certificate for the applicant's second marriage to [REDACTED].

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 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.

In an affidavit dated April 12, 2007, the applicant's wife states she and her children are suffering hardship by being separated from the applicant. The applicant's wife states she is "distressed very much by having to see [her] children suffer from not being able to see [the applicant]." Counsel states that the applicant's wife "is under severe stress being a mother and father to their three children." *Appeal Brief, supra*. The AAO notes that the children the applicant's wife mentions in her affidavit are actually the children of the applicant and his first wife, and there is no evidence in the record that the children's biological mother is not raising them. Additionally, two of the applicant's children are adults. Furthermore, though the applicant's one minor son may experience hardship in relocating to Mexico, the applicant's son is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act. The applicant's wife states that she is suffering hearing loss, and the State of Texas supports her to attend a rehabilitative program for her hearing loss. She claims that if she moves to Mexico, she "will be unable to continue to attend this rehabilitative program." The AAO notes that the applicant has not established that his wife cannot find a similar rehabilitative program in Mexico or that she could not continue attending the program in El Paso, Texas. The applicant's wife states that in February 2007, she "was experiencing chest and heart pains and numbness in one of [her] shoulders." The AAO notes that there was nothing from a doctor indicating exactly what the medical issues are, any prognosis or what assistance is needed and/or given by the applicant. Additionally, the AAO notes that there was no documentation submitted establishing that the applicant's wife could not receive treatment for her medical condition in Mexico or that she has to remain in the United States to receive any medical treatments. The AAO notes that the applicant's wife may experience some hardship in relocating to Mexico, a country in which she has no previous ties; however, the applicant's wife works as an equipment operator, 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 it has not been established that the applicant's wife has no family ties in Mexico. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined him in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's wife if she remains in the United States, maintaining her employment and health insurance, and in close proximity to her family. The applicant's wife states she is "unable to move to Mexico to accompany [the applicant]. [She] [is] unfamiliar with the customs, and culture of Mexico, and most importantly, [she] would not have health insurance." 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 is "in danger of losing her home;" however, the AAO notes that the applicant's wife's children work to help her pay her mortgage. Additionally, the AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to his wife'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.