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U.S. Department of Homeland Security  
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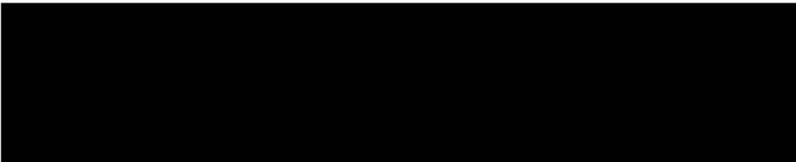
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OCT 01 2009

FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date:  
CDJ 2005 673 440 (relates)

IN RE: 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 daughter.

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 August 24, 2006.

On appeal, the applicant, through counsel, claims that "extreme hardship can be established to the USC spouse and USC daughter of [the applicant]." *Form I-290B*, dated September 26, 2006.

The record includes, but is not limited to, counsel's brief, affidavits and statements from the applicant's wife and her parents, and a country report on 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:

(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 daughter 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 daughter 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 October 1996 without inspection. On September 22, 2003, the applicant's United States citizen wife filed a Petition for Alien Relative (Form I-130). On January 7, 2005, the applicant's wife filed a Form I-129F on behalf of the applicant. In June 2005, the applicant departed the United States. On June 2, 2005, the applicant's Form I-129F was approved. On October 24, 2005, the applicant filed a Form I-601. On August 24, 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 June 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 June 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 the applicant's wife "would suffer extreme hardship if [the applicant] is not allowed to return and remain in the United States." *Appeal Brief*, page 3, filed October 23, 2006. Counsel states

that the applicant's wife's parents will suffer extreme hardship if the applicant's wife joins the applicant in Mexico. *Id.* at 4. In an affidavit dated October 16, 2006, the applicant's wife states her mother spends a lot of time with her because her mother has chronic asthma. The AAO notes that other than statements by counsel, the applicant's wife, and her parents, there is no medical documentation in the record establishing that the applicant's mother-in-law suffers from any medical conditions. Additionally, if the applicant's mother-in-law is suffering from asthma, there was no documentation submitted establishing that she 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. Furthermore, the applicant's mother-in-law is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act. Counsel states that the applicant's wife "would have difficulty finding employment in Mexico because she has been raised, educated and worked in the United States." *Appeal Brief, supra* at 6. The AAO notes that the applicant's wife is employed as a cashier in a grocery 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 it has not been established that the applicant's wife does not speak Spanish or that she has no family ties in Mexico. In fact, the AAO notes that the applicant's wife's parents are natives of Mexico, she has a brother and sister residing in Mexico, and the applicant's wife was raised and educated in both the United States and Mexico. Counsel states that if the applicant is unable to return to the United States, his daughter "will be left to grow up and go through adolescence without a father." *Id.* at 7. Additionally, counsel states that the applicant helps support his daughter. *Id.* The AAO notes that the applicant provided documentation establishing that he made seven (7) child support payments in 2003. Additionally, the AAO notes that the applicant's daughter may experience some hardship in relocating to Mexico; however, she is not a qualifying relative 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 the applicant's wife "cannot move back to Mexico since she has built her life here in the United States." *Id.* at 5. 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. The applicant's wife states she has a number of expenses, including supporting the applicant in Mexico because he cannot secure employment. 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. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

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.