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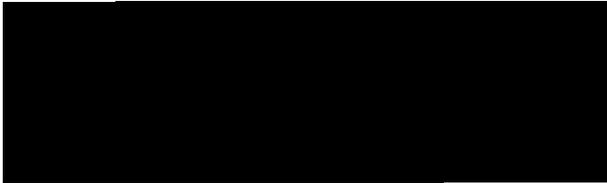


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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OCT 01 2009

FILE:

Office: CIUDAD JUAREZ, MEXICO

Date:

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: 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 Officer in Charge (OIC), Ciudad Juarez, 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's stepfather is a 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 stepfather, lawful permanent resident mother, and siblings.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated November 14, 2006.

On appeal, the applicant's stepfather claims "that the [e]xtreme [h]ardship does exist not only for [him] as the petitioner and step-father but to [the applicant's mother]." *Letter from* [REDACTED] dated December 11, 2006.

The record includes, but is not limited to, letters from the applicant's stepfather, a letter from [REDACTED], a letter from the applicant's stepfather's employer, and medical documents for the applicant's mother'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.

In the present application, the record indicates that the applicant initially entered the United States in August 2001 without inspection. On April 28, 2004, the applicant's naturalized United States citizen stepfather filed a Form I-130 on behalf of the applicant. On December 2, 2004, the applicant's Form I-130 was approved. In December 2005, the applicant departed the United States. On December 7, 2005, the applicant filed a Form I-601. On November 14, 2006, the OIC 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 qualifying relatives.

The applicant accrued unlawful presence from October 15, 2003, the date on which the applicant turned 18 years of age, 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.

In a letter dated December 11, 2006, the applicant's stepfather states that since the applicant returned to Mexico, their lives have been chaotic. The applicant's stepfather further states that the applicant's mother's "health has not been well." In a letter dated December 1, 2006, [REDACTED] states the applicant's mother "has a medical condition, that requires family support, [she is] currently on medication and under [his] care." The AAO notes that [REDACTED] did not indicate what kind of medical conditions the applicant's mother is suffering from, the medications she is taking, or the care he provides for her. Additionally, there is no evidence in the record that the applicant's mother cannot be treated for her medical conditions in Mexico or that she has to remain in the United States to receive treatments. In fact, the AAO notes that the applicant's mother is being treated by [REDACTED] in

Mexico. In a letter dated November 21, 2006, [REDACTED] states the applicant's mother is suffering from "neurosis crisis and depression over family problems because her sons have problems in regards to their legal residency in the United States. These problems have also affected [the applicant's stepfather] emotionally as well as physically." The applicant's stepfather states he feels like he is going to have a nervous breakdown. In a letter dated November 30, 2006, [REDACTED] states the applicant's "parents and younger sibling are suffering from depression." The AAO notes that other than statements from [REDACTED] and the applicant's stepfather, there are no professional psychological evaluations for the AAO to review to determine how the separation from the applicant is affecting the applicant's stepfather and mother mentally, emotionally, and/or psychologically. The applicant's stepfather states he is having problems at work because of the separation from the applicant. In a letter dated November 22, 2006, [REDACTED] states the applicant's stepfather works in maintenance and he is "a person of good moral character and a responsible employee." The AAO notes that it has not been established that there are no employment options for the applicant's parents in Mexico or that they have no transferable skills that would aid them in obtaining jobs in Mexico. Additionally, the AAO notes that the applicant's parents are natives of Mexico who speak Spanish, and it has not been established that they have no family ties in Mexico. The AAO finds that the applicant failed to establish that his stepfather and mother would suffer extreme hardship if they joined him in Mexico.

In addition, the applicant does not establish extreme hardship to his stepfather and mother if they remain in the United States. The applicant's stepfather states that they "cannot just move to Mexico and leave everything behind." As a United States citizen and lawful permanent resident of the United States, the applicant's stepfather and mother are not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that it has not been established that the applicant is unable to contribute to his stepfather and mother'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 stepfather and mother 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.