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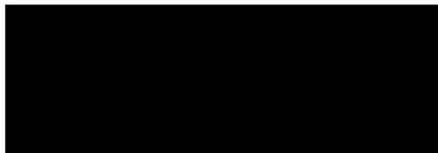
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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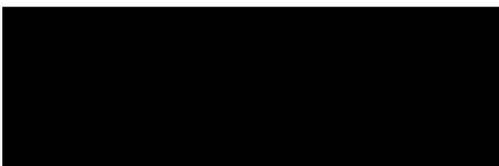
Date: OCT 28 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 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).

for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, Mexico City, denied the instant waiver application. The matter 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, the husband of a U.S. citizen, the father of a U.S. citizen son, the stepfather of a U.S. citizen daughter, and the beneficiary of an approved Form I-130 petition.

The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife, child, and stepchild. The district director also found that the applicant had not established that failure to approve the waiver application would cause extreme hardship to his U.S. citizen spouse, and denied the application.

On appeal, counsel provided additional evidence. Counsel also stated,

It appears that the [USCIS] has failed to clearly recognize that the Applicant's initial entry into the US occurred before April 1997 and cannot be factored in determining unlawful presence.

Whether counsel intended to challenge the finding that the applicant is inadmissible is unclear. In any event, the AAO will review that decision.

Section 212(a)(9)(B)(i) of the Act provides:

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

On the Form I-130, Petition for Alien Relative, the applicant's wife, who signed that form on March 10, 2005, stated that the applicant entered the United States without inspection. The applicant stated, on the Form I-601 waiver application, that he had entered the United States illegally during July

2004 and lived in Idaho from then until August 2007. The record does not demonstrate that the applicant ever achieved any legal status in the United States.

The Form I-601 states that, when the applicant signed it, on August 27, 2007, he lived in Guascuaro, Michoacan, Mexico. The applicant submitted that Form I-601 and a visa application in Juarez, Mexico on September 12, 2007, which demonstrates that he had, by then, left the United States.

Counsel is correct that unlawful presence prior to April 1, 1997 cannot be considered for the purpose of finding an applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The unlawful presence upon which the instant decision is based, however, occurred after that date.

The evidence in the record is sufficient to show that the applicant was unlawfully present in the United States from July 2004 until August 27, 2007, and that he has left the United States. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] 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 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant, his child, or his stepchild is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is

diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The record contains a letter, dated August 22, 2007, from the applicant's wife. In it, she stated the child she and the applicant have has various medical problems including allergies. She also stated that the applicant's paychecks are garnished to cover a debt for hospitalization. She stated that if the applicant is removed from the United States she would be obliged to take a full-time job with better pay and she doubts that she can find such a position. She stated that if she were working full-time and the applicant were not in the United States, she would be obliged to find a nanny for her son or risk his health in day care, and without the applicant's income she would be unable to pay the family's bills. She stated that she would be obliged to locate a cheaper, and yet safe, place to live. Finally, the applicant's wife stated that she believes her situation is different from a typical case because she and her husband have a young family and their children need the applicant and would miss him very much.

The record contains a letter, dated September 26, 2007, from the applicant's wife, which is essentially identical to her August 22, 2007 letter.

The record contains an Assignment of Wages, which the applicant signed on April 12, 2007. It shows that the applicant's wages were garnished to amortize a debt in excess of \$10,000 at that time. In a note at the bottom of that document the applicant's wife stated that the debt is growing because of her inability to make the agreed upon payments. Other evidence shows that the applicant's wife and [REDACTED] are responsible for a payment of \$251.20 to amortize a balance, on August 3, 2007, of \$5,380.32 on a car loan. A Qwest bill shows that [REDACTED] was billed \$48.69 for telephone service during August of 2007, and \$47.86 for July of 2007. The relationship between [REDACTED] and the applicant and his wife is unknown to the AAO.

A bill due on May 1, 2007 shows that the applicant's wife paid \$28 for waste removal. In a note written on that bill the applicant's wife stated that the monthly charge for that service is \$16. A bill from the Idaho Power Company shows that the applicant's wife owed \$106.25 on August 14, 2007

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<sup>1</sup> No other information about [REDACTED] is in the record.

for electrical power during the previous month. In a note on that bill the applicant's wife stated that was typical of her monthly electric bill.

The record contains a letter dated August 22, 2007 from [REDACTED] who stated that the applicant and his wife pay her \$200 per month to baby sit their two children. The record contains a semi-annual automobile insurance bill, which stated that insurance on one of the cars of the applicant's and applicant's wife's costs \$173.41 every six months, which equates to \$28.90 per month. Another insurance bill shows that they pay an additional \$86.26 per month on another vehicle. A handwritten rent receipt shows that the applicant and applicant's wife pay \$550 per month to rent their home.

A budget provided by the applicant's wife shows that she is obliged to pay \$1,989.03 per month to cover her recurring expenses. That budget includes a note, handwritten by the applicant's wife, stating that she makes \$1,200 per month.

Medical reports in the record show that the applicant's child was born with various health issues that required considerable medical intervention at that time and later. No evidence was presented pertinent to the child's current condition and prognosis. No evidence pertinent to the child's allergies or their severity was presented.

Other medical reports show that the applicant's wife had health issues pertinent to her gallbladder, spleen, and liver during 2002; and that during 2004 she was treated for depression and anxiety with the antianxiety drugs Paxil and then Lexapro. The reports further show that the applicant's wife has seen a doctor for other sundry complaints, including back pain, cough, fever, ear pain; shoulder and chest pain, gallstones, strep throat, insomnia, and diarrhea, .

The record contains a letter, dated September 26, 2007, from [REDACTED] who stated that the applicant's child was born with pneumonia and has recurrent ear infections, Eustachian tube dysfunction, and pneumonia. He further stated that the applicant's wife suffers from anxiety disorder and obesity, and that permitting the applicant to remain in the United States " . . . would be very beneficial." The doctor did not otherwise comment on the seriousness of the maladies of the applicant's wife or the applicant's child.

The record contains no evidence demonstrating that the medical conditions of the applicant's wife and child are the result of, or have been exacerbated by, the applicant's absence, or that the applicant's presence in the United States is necessary to alleviate suffering associated with them. The evidence does not support, either, the assertion that, the applicant's child's health has been compromised by placement in a daycare, or that the applicant's wife hired a nanny.

[REDACTED] statement that the applicant's presence would be beneficial does not demonstrate that the applicant's wife will suffer medical hardship, or emotional hardship based on the child's medical conditions, which, when considered with the other hardship factors in this case, would rise to the level of extreme hardship.

The financial evidence in the record includes evidence pertinent to various bills, debts, and expenses. The only evidence pertinent to the applicant's wife's income, however, is her statement that she earns \$1,200 per month. The record contains no corroborating evidence, copies of tax returns that were submitted to IRS, for instance, of the assertion that the applicant's wife earned that amount.

More importantly, the record lacks evidence demonstrating the income, if any, of the applicant prior to this departure from the United States or his current financial situation in Mexico. There is no evidence showing that the applicant contributed financially to his family prior to this departure to support a claim that his absence has caused his spouse and child economic hardship.

Although the statements by the applicant and his spouse are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Without evidence pertinent to the applicant's wife's income, the AAO is unable to find that, if the applicant were removed and his wife and child remained in the United States, his wife would suffer financial hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The remaining hardship factor is the emotional harm that the applicant's absence would cause to the applicant's wife. The applicant's wife argued that her situation is different from a typical case because she and her husband have a young family and their children need the applicant and would miss him very much if he were forced to leave.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases.

The evidence shows that the applicant's wife was treated for anxiety and depression during 2004. The record contains no evidence pertinent to the severity of that condition then, or, if it still persists, its severity today. The record contains no evidence that she is so adversely affected by the applicant's absence that she suffers emotional hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

Further still, the applicant has not addressed whether his wife and child would suffer hardship if they relocated to Mexico. The record contains no evidence, nor even an assertion that hardship would ensue. Under these circumstances, given the absence of evidence or argument, the AAO cannot find that, if the applicant's wife and child relocated to Mexico, she would suffer extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.