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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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[Redacted]

FILE:

[Redacted]

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

SEP 01 2009

(CDJ 2004 753 042 relates)

IN RE:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[Redacted]

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. 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 who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with his wife and child in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated August 24, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on March 30, 2002; two untranslated letters from a copy of naturalization certificate; a psychological evaluation for and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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 Attorney General [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 this case, the district director found, and counsel does not contest, that the applicant entered the United States in 1996 without inspection and remained until November 2005. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in November 2005. He now seeks admission within ten years of his 2005 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(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 U.S. citizen or lawfully resident spouse or parent of the applicant. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These 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 this case, a psychological evaluation states that [REDACTED] no longer communicates with her parents because they are unsupportive of her marriage to the applicant. The evaluation further states that [REDACTED] had a very sad childhood as her father was not present in her life from the ages of five to twelve and her mother was very strict, authoritarian, and over-protective. According to the evaluation, [REDACTED] moved to the United States from Mexico when she was twelve years old, had a very difficult time adjusting to a new country, and remains unsure of her English language skills. The evaluation states that [REDACTED] has never attended counseling or been under the supervision of a psychiatrist and has never thought of committing suicide. Since her husband departed the United States, [REDACTED] has been having problems sleeping and cries constantly. In addition, according to the evaluation, [REDACTED] "finds herself strapped financially [and] struggles every month to come up with enough money to pay for all the expenses her husband used to pay." [REDACTED] did not work as much when the applicant was in the United States and does not like that the couple's son is being cared for by strangers. The evaluation concludes that [REDACTED] has Major Depressive Disorder. *Psychological Evaluation by [REDACTED]*, dated October 4, 2006.

The AAO recognizes that [REDACTED] has endured and will continue to endure hardship as a result of the denial of her husband's waiver application and is sympathetic to the family's circumstances. However,

there is insufficient record evidence to show that the level of hardship rises to the level of extreme hardship. Significantly, there are no statements, affidavits, or letters in the record from the applicant. Although there are two short letters from [REDACTED] in the record, each consisting of fewer than seven sentences, neither letter has not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Accordingly, the AAO can give no weight to the untranslated statements

Regarding the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record is based on a single interview the psychologist conducted with [REDACTED] on September 26, 2006. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Moreover, to the extent the psychologist and counsel make a financial hardship claim, the AAO notes that there are no financial or tax documents whatsoever in the record. In any event, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. See also *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).

Her situation, if [REDACTED] decides to remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. See also *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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). Furthermore, [REDACTED] does not discuss the possibility of moving back to Mexico, where she was born, to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her.

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