

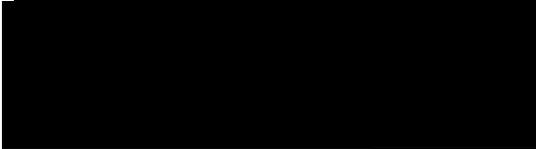
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



H2

FILE: Office: MEXICO CITY (CIUDAD JUAREZ)
(CDJ 1992 585 247 relates)

Date: SEP 02 2009

IN RE:



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:



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, Mexico. 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 lawful permanent resident parents in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated October 30, 2006.

The record contains, *inter alia*: declarations and a letter from the applicant's parents, [REDACTED] copies of the applicant's parents' permanent resident cards; a letter from [REDACTED] physician; 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 the applicant does not contest, that the applicant unlawfully entered the United States in January 1991 and remained until January 2006. 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 January 2006. Therefore, the applicant accrued unlawful presence of over eight years. He now seeks admission within ten years of his 2006 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 one year or more.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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.

It is not evident from the record that the applicant's parents have suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

In this case, [REDACTED] states he became a lawful permanent resident of the United States on July 27, 1991. He states he has diabetes, takes medication, and has been placed on a special diet. [REDACTED] further states that his son, the applicant, was born with a "mental disability[,] has not received formal education[, and that his] wife has taken care of him [the applicant] his entire life." According to Mr. [REDACTED], his son "has been under medical attention throughout his lifetime." [REDACTED] states that he tries to visit his son in Mexico often and that when he sees his son, he is "unbathed and unfed." Mr. [REDACTED] claims he cannot leave the United States because he risks losing his residency and would not be able to work to support his family. *Declaration from* [REDACTED], dated January 15, 2007; *Letter from* [REDACTED], undated.

[REDACTED] states she became a lawful permanent resident of the United States on July 11, 1996. She states her son has a mental disability, but has never been formally diagnosed. [REDACTED]

“believe[s] that he suffers from schizophrenia but [is] not certain.” She claims that since her son left the United States, she has been suffering emotionally. [REDACTED] states that another one of her sons, [REDACTED] has been taking care of the applicant in Mexico when he can, but [REDACTED] works and is unable to provide the support that she provides. [REDACTED] contends she has suffered from nightmares and anxiety since the applicant departed the United States. She states she plans on beginning therapy soon and that if her son is not permitted to return to the United States, her health “will surely deteriorate.” She claims she is unable to leave the United States for long durations to take care of her son because she risks losing her residency and will be unable to work. *Declaration from [REDACTED]*, dated January 16, 2007.

A letter from a physician in Mexico in the record states that the physician “performed and completed a physical and lab exams [for [REDACTED]], who is a carrier of Diabetes Mellitus II of 16 years of evolution.” *Letter from [REDACTED]* dated December 28, 2006.

There is insufficient evidence to show that either of the applicant’s parents has suffered or will suffer extreme hardship if the applicant’s waiver application were denied.

The AAO recognizes that [REDACTED] have endured hardship since the applicant departed the United States and is sympathetic to the family’s circumstances. However, if [REDACTED] decide to stay in the United States, their situation 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).

Although the record indicates [REDACTED] has diabetes, there is no letter in plain language from any health care professional diagnosing the severity, prognosis, and treatment [REDACTED] requires. Aside from mentioning he takes medication and is on a special diet, [REDACTED] himself does not discuss how his diabetes affects his daily life and he does not contend that he requires any assistance because of it. Similarly, although [REDACTED] claim that their health will deteriorate if the applicant is not permitted to return to the United States, there is no documentary evidence supporting their contention. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

Regarding [REDACTED] assertion that the applicant is mentally disabled and needs their assistance, despite their claim that the applicant “has been under medical attention throughout his

lifetime,” *Letter from* [REDACTED], *supra*, they claim he has “never been formally diagnosed.” *Declaration from* [REDACTED], *supra*. There is no documentary evidence, such as a letter from a physician or mental health professional, supporting their claim that the applicant is mentally challenged. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, [REDACTED] contention that they cannot move to Mexico because they will risk losing their residency in the United States and will be unable to work is unpersuasive. [REDACTED] has been a lawful permanent resident for over twenty years and [REDACTED] for over ten. There is no indication they have sought citizenship in order to avoid the risk of losing their residency should they move to Mexico to be with the applicant. In addition, there is no evidence in the record verifying Mr. and [REDACTED] employment or documenting their wages. There is also no suggestion in the record that they could not obtain employment in Mexico. In any event, even if [REDACTED] were to experience some economic hardship by moving to Mexico, 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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s parents 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.