

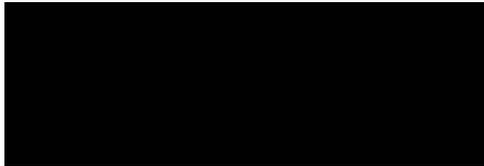
identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

PUBLIC COPY



U.S. Citizenship and Immigration Services



tt2

FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ)
(CDJ 2004 737 601 relates)

Date: SEP 04 2009

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:

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).

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 is married to a naturalized U.S. citizen and 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 with his wife and children 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 October 24, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, ■■■■■ indicating they were married on October 13, 1998; copies of the birth certificates of the couple's three U.S. citizen sons; a copy of ■■■■■ naturalization certificate; copies of the children's report cards; financial and tax documents; a declaration and a letter from ■■■■■ a letter from one of the couple's children; a letter from ■■■■■ chiropractor; a letter from ■■■■■ employer; a letter of support from the couple's neighbor; photos of the applicant and his family; 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 record indicates, and the applicant does not contest, that he unlawfully entered the United States in 1991 and remained until October 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 October 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, [REDACTED] states that since her husband departed the United States, she has suffered extreme emotional distress. She contends she sleeps only a few hours at night and wakes up in the middle of the night. [REDACTED] states she has lost weight and often feels like vomiting. She further

states it is difficult for her to concentrate at work and she is often irritable, very sad, and unhappy. [REDACTED] states she cannot afford to take time off for medical appointments and that her medical conditions have caused her to incur additional expenses that add to her financial problems. She states she earns approximately \$1,300 per month and that it has been extremely difficult to pay the \$894 monthly mortgage payment since her husband's departure. She contends she also has a car payment of \$458 per month and that she is unable to meet all of the family's financial obligations. [REDACTED] states that her three sons, ages four, eight, and eleven, desperately need their father and that her eight year old's "outbursts, behavior and hyperactivity" have become an increasing concern for her such that she has scheduled a meeting with the school psychologist. In addition, [REDACTED] states that if her

husband's waiver application were denied, she and her children would be forced to move to Mexico, where they would be immigrants in a foreign country and where her children would have to struggle in a foreign school system, seriously compromising their education. *Declaration of* [REDACTED] dated November 20, 2006; *Letter from* [REDACTED], undated.

A letter from [REDACTED] chiropractor states, in its entirety, "[REDACTED] is currently undergoing treatment for headaches secondary to stress. She began a treatment program on 10/18/06 at three times per week. I anticipate her treatment program will continue for another six to eight weeks." *Letter from* [REDACTED] dated November 9, 2006.

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

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. The AAO finds that if [REDACTED] remains in the United States without her husband, she would suffer extreme financial hardship. Documentation in the record shows that [REDACTED] monthly expenses total \$1,677, consisting of: mortgage of \$894, car payment of \$458, gas bill of \$42, water bill of \$71, waste management bill of \$34, and a cell phone bill of \$178. A letter in the record from [REDACTED] employer shows that [REDACTED] works full-time as a Production Worker, earning \$8.14 per hour. *Letter from* [REDACTED], dated November 10, 2006. Copies of [REDACTED] pay stubs in the record show that she regularly works approximately ten hours of overtime and earns a net pay of approximately \$670 every two weeks. Tax documents in the record indicate that when the applicant lived in the United States, he worked and paid taxes. The applicant earned \$27,892 in 2000, \$29,389 in 2001, and \$26,654 in 2002. *Wage and Tax Statements for* [REDACTED] *for 2000, 2001, and 2002 (Form W-2)*. According to the applicant's Biographic Information (Form G-325A), in 2003, the applicant became self-employed as a painter. His tax documents show he earned \$16,060 in 2003, and \$8,640 in 2004. *Wage and Tax Statements for* [REDACTED] *for 2003 and 2004 (Form W-2)*. Based on this information, the AAO finds that if the applicant's waiver application were denied, [REDACTED] would experience extreme financial hardship as her monthly expenses far exceed her income, despite her working overtime regularly and particularly considering she has three minor children.

Nonetheless, there is insufficient evidence to show that [REDACTED] would experience extreme hardship if she moved back to Mexico, where she was born, to be with her husband to avoid the hardship of separation. **Her contention that she and her children would be forced to become immigrants in a foreign country, and that her children would struggle in a foreign school system, thus compromising their education, does not rise to the level of extreme hardship based on the record.** [REDACTED] does not claim that she or any of her children have any physical or mental health issues that would make her transition to living in Mexico again more difficult than would normally be expected. To the extent the record contains documentation that [REDACTED] is seeing a Chiropractor for her headaches, [REDACTED] does not claim she cannot receive adequate treatment in Mexico. In addition, [REDACTED] does not contend she does not speak Spanish, nor does she contend she no longer has family in Mexico or that she could not find employment in Mexico.

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.