

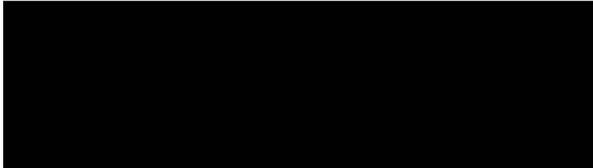
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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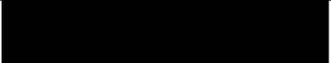


U.S. Citizenship
and Immigration
Services



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FILE:



Office: CIUDAD JUAREZ

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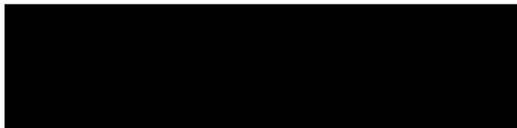
(CDJ 2004 807 784 relates)

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), and Section 212(h) of the Act, 8 U.S.C. § 1182(h)

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 Officer in Charge, Ciudad Juarez, 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 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 section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of unlawfully possessing a firearm, a crime involving moral turpitude. The applicant is married to a 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), and section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his wife and child in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to his U.S. citizen spouse. The officer in charge further found that the applicant failed to establish that his admission would not be contrary to the safety or security of the United States or that he has been rehabilitated. The officer in charge denied the application accordingly. *Decision of the Officer in Charge*, dated August 25, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED], indicating they were married on August 19, 2003; a copy of [REDACTED]'s naturalization certificate; two letters from [REDACTED] a copy of the birth certificate of the couple's U.S. citizen daughter; several letters of support; a psychological report for the applicant; and a copy of an approved Immigrant 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)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), 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 counsel concedes, that the applicant entered the United States without inspection in 1996 and remained until December 2003. *Supporting Materials for I-290B*, dated October 19, 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 December 2003. Therefore, the applicant accrued unlawful presence of over six years. He now seeks admission within ten years of his 2003 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), 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 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. § 212(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).¹

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.

¹ The officer in charge further found, and counsel does not contest, that the applicant is also inadmissible under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude based on his conviction for unlawfully possessing a firearm. Because, as explained *infra*, the applicant has not met his burden of establishing eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), it is unnecessary to determine whether the applicant has established eligibility for a waiver under section 212(h) of the Act, 8 U.S.C. § 212(h).

In this case, [REDACTED] states she has been separated from her husband for over two years and the separation has been emotionally difficult. [REDACTED] states she has struggled to pursue her Master's degree in social work and has been in need of her husband's emotional and moral support. [REDACTED] states she was granted a full scholarship to pursue her Master's degree, but that she must be available to work for the state of Washington for two years after graduation or else she must repay the tuition expenses in full. She states she is "torn between [her] personal and professional dreams which [she has] struggled to achieve so far and the need to be with [her] husband." Ms. [REDACTED] states that if she moves to Mexico, they would live in poverty, particularly considering she would have to repay her tuition. [REDACTED] further states that she would have a difficult to impossible time finding employment in Mexico. [REDACTED] states she has been depressed since her husband departed the United States and that she is seeking spiritual counseling which has eased her "panic anxieties." In addition, [REDACTED] states that she is pregnant and is due to have the baby on August 1, 2006.² She claims she is terrified of going through the birthing process alone. She contends her medical clinic referred her to a mental health counselor as her stress and depression can adversely affect the baby. *Letter from [REDACTED] dated June 1, 2006; Letter from [REDACTED], dated November 28, 2005; Letter from [REDACTED], dated October 12, 2005.*

Several letters in the record state that [REDACTED] has been under a lot of stress and is depressed. *See, e.g., Letter from [REDACTED] dated September 18, 2006 (stating "how stressful and devastating this denial decision is on [REDACTED]"); Letter from [REDACTED], dated November 29, 2005 (stating [REDACTED] is under a "high amount of stress" due to school and the separation from her husband); Letter from [REDACTED], dated November 21, 2005 (stating she has been providing spiritual support and guidance to [REDACTED] to help her overcome her depression, and observing that [REDACTED] has become more withdrawn and lacks the motivation and enthusiasm she previously had).*

After a careful review of the evidence, it is not evident from the record that the applicant's wife, Ms. [REDACTED] would suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO finds that if [REDACTED] had to move to Mexico to be with her husband, she would experience extreme hardship. [REDACTED] would have to readjust to living in Mexico after having lived in the United States for the past sixteen years since she was twelve years old. In addition, the record shows that [REDACTED] was granted a full scholarship to pursue a Master's degree in social work, requiring her to be available to work in Washington State for two years after graduation or else repay her tuition expenses. Documentation in the record substantiates [REDACTED] claim, indicating that she was selected among many outstanding applicants and awarded financial assistance to participate in the Child Welfare Training and Advancement Program at Eastern Washington University. *Letter from [REDACTED], dated September 8, 2005.* The record shows that if [REDACTED] leaves the program, it "could mean the loss of an investment of \$15,000 for the program," *Letter from [REDACTED] dated November 30, 2005, and it would be "devastate[ing] to [REDACTED] to give up*

² According to counsel, [REDACTED] gave birth to the couple's daughter on July 12, 2006. *Supporting Materials for I-290B, supra.*

this chance that could lead to long-term job and life stability.” Letter from [REDACTED] dated November 28, 2005. Under these unique circumstances, the hardship [REDACTED] would experience if she had to move back to Mexico is extreme, going well beyond those hardships ordinarily associated with deportation.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the record contains several letters of support describing [REDACTED] depression and high levels of stress, there is no evidence the hardship [REDACTED] is experiencing is any greater than those hardships ordinarily associated with deportation. The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family’s circumstances. However, if [REDACTED] decides to remain in the United States without her husband, 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).

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