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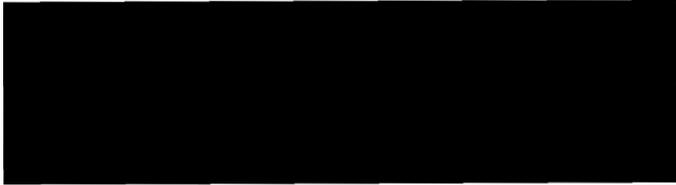
U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
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FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date: **FEB 25 2010**

IN RE: 

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

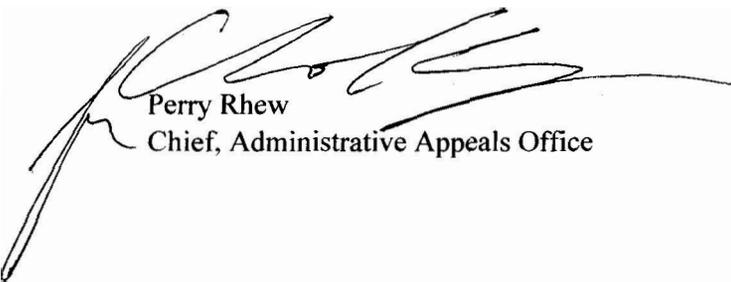
ON BEHALF OF APPLICANT:

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).

  
Perry Rhew  
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 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated November 14, 2006.

On appeal, the applicant's wife asserts that she will experience financial and emotional hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant's Wife*, dated December 11, 2006.

The record contains statements from the applicant's wife, mother-in-law, sister-in-law, and brother; a statement from a friend of the applicant's wife; medical documentation for the applicant's wife; copies of tax records, financial documents, and bills for the applicant and his wife; documentation regarding the applicant's lease and purchase of real property; documentation of the applicant's wife's transfer of funds to the applicant in Mexico; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's birth certificate; a copy of the applicant's marriage certificate, and; documentation regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

The record reflects that the applicant entered the United States without inspection in or about December 1995. He remained until or about December 2005. Accordingly, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until December 2005, totaling over eight years. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

On appeal, the applicant's wife asserts that she will experience financial and emotional hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant's Wife* at 1. The applicant's wife explains that she fell in love with the applicant when she reached 14 years of age, and she has been with him for almost half of her life. *Id.*

The applicant's wife states that she has been diagnosed with dermatitis and that her fingers become inflamed and painful. *Id.* She notes that the condition is exacerbated by stress. *Id.* She indicates that extremes of temperature and humidity in Mexico can worsen the condition. *Id.*

The applicant's wife states that she is experiencing financial difficulty without the applicant's assistance. *Id.* at 2. She provides that she works two jobs from 7:30am to 10:30pm for a total gross pay of approximately \$650 per week. *Id.* She notes that she must pay monthly expenses of \$792.23 for land they are purchasing, \$360.82 for a car payment, \$141 for car insurance, approximately \$170 for utilities, approximately \$150 for gas, approximately \$280 for groceries, and \$50 for phone cards to call the applicant in Mexico. *Id.* She states that she and the applicant spent their savings and borrowed \$9,000 from her sister to pay off their house, but that they have been unable to repay her sister. *Id.* She indicates that her home owner's insurance was canceled, and that she will have difficulty meeting their annual property tax obligation. *Id.* She states that she and her daughter have not seen a doctor for annual check-ups due to financial concerns. *Id.* She indicates that she will suffer damage to her credit and goals should she stop paying for land she and the applicant are purchasing as an investment. *Id.*

The applicant's wife explains that she intended to complete more education once her daughter was older, yet the applicant's absence is disrupting her plan due to the need to work to meet her economic needs. *Id.*

The applicant's wife expresses concern for her ability to find employment in Mexico should she join the applicant. *Id.* The applicant's wife states that she and the applicant have one daughter, and that they wish to have more children, but that she is unsure of the quality of medical care she would receive should she have a child in Mexico. *Id.* The applicant's wife provides that she has resided in the United States since she was one year old, and she wishes to remain. *Id.* She notes that her mother and sister reside in the United States and they provide childcare services while she works. *Id.* at 3. She explains that she is close with her family members and she does not wish to be separated from them should she relocate to Mexico. *Id.*

The applicant's wife states that she and the applicant's daughter miss the applicant, and that their daughter is beginning to have behavioral problems due to the applicant's absence. *Id.* She expresses concern for her daughter's educational development should they relocate to Mexico for the duration of the applicant's inadmissibility. *Id.*

The applicant provides a statement from his wife's friend who attests that his wife is enduring emotional and financial hardship due to the applicant's absence. *Letter from Applicant's Wife's Friend*, dated December 13, 2006.

The applicant's mother-in-law states that the applicant's wife and daughter are suffering emotional hardship due to separation from the applicant. *Statement from the Applicant's Mother-in-law*, dated December 12, 2006. She contends that the applicant's wife faces particular difficulty due to her need to work so much, which reduces the level of attention the applicant's wife can provide for her daughter. *Id.* at 1.

Upon review, the applicant has not shown that his wife will experience extreme hardship should he be prohibited from entering the United States. The applicant has not established that his wife will suffer extreme hardship should she remain in the United States without him for the duration of his inadmissibility. The applicant's wife expresses that she is close with the applicant and that she is experiencing emotional hardship due to their separation. The AAO acknowledges that the separation of spouses often results in significant psychological hardship. However, the applicant has not distinguished his wife's emotional challenges from those commonly experienced when spouses reside apart due to inadmissibility.

Federal court and administrative decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). 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 (9<sup>th</sup> 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. *Hassan v. INS*, *supra*, held further that the 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.

The applicant's wife states that she is experiencing economic difficulty due to the applicant's absence. She listed expenses totaling approximately \$1,945 per month, including \$792.23 per month for land she and the applicant are purchasing as an investment. The applicant provided copies of bills to support his wife's stated expenses. However, while the applicant's wife asserts that she earns approximately \$650 gross income per week, the applicant has not provided any documentation of her income.

The record shows that the applicant is leasing the referenced land at a rate of \$792.23 per month with the right to close on a purchase of the property once he has paid a specified amount. Thus, the applicant has not established that he and his wife have an outstanding mortgage obligation on the land. The applicant has not submitted sufficient documentation of his lease of the land such that the AAO can determine whether he may discontinue payments on the property and forego its purchase. While the AAO acknowledges that the applicant and his wife wish to complete the purchase of the investment property, the applicant has not shown whether his wife may discontinue payment for the property, or whether they would incur significant economic loss should she do so. Further, the applicant's wife is not named in the lease. Thus, the applicant has not shown that his wife's credit history would be affected by the failure to complete the sale.

The applicant submitted a document to show that his wife transferred \$200 to him in Mexico on December 7, 2005, yet he has not shown that his wife transfers funds to him on a regular basis, or that he requires that she do so. The applicant has not stated whether he works in Mexico, or whether he is able to meet his needs there. Thus, he has not shown that he presents an economic burden to his wife.

Accordingly, the applicant has not provided adequate evidence or explanation to establish that his wife is facing significant financial hardship in his absence.

The applicant's wife states that she has been diagnosed with dermatitis, and that her condition is exacerbated by stress and changes in temperature and humidity. The AAO acknowledges that the applicant's wife has had difficulty with dermatitis. Yet, the applicant has not shown that his wife's condition is so severe that she has difficulty working or performing ordinary tasks. The applicant has not shown that his wife's challenges due to dermatitis will be significantly greater due to his absence, or that she requires his assistance due to the condition.

The record contains references to hardships experienced by the applicant's daughter. The applicant's wife states that their daughter misses the applicant, and she is beginning to have behavioral problems due to the applicant's absence. Direct hardship to an applicant's child is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situation is a common and anticipated result when a parent relocates abroad due to inadmissibility. The AAO recognizes that the applicant's daughter faces significant emotional hardship due to being separated from the applicant. Yet, the applicant has not established that she is suffering consequences that can be distinguished from those ordinarily experienced. The applicant has not shown that his daughter's emotional hardship is elevating his wife's challenges to an extreme level.

Based on the foregoing, the applicant has not established by a preponderance of the evidence that his wife will suffer extreme hardship should he be prohibited from entering the United States and she remain.

The applicant has also not shown that his wife will endure extreme hardship should she relocate to Mexico to maintain family unity. The applicant's wife expressed concern that she would endure economic hardship should she reside in Mexico, in part due to a lack of employment opportunities. The AAO acknowledges that many Mexican nationals choose to work in the United States. However, the applicant has not shown that his wife would be unable to find employment that is sufficient to meet her needs. As noted above, the applicant has not stated whether he works in Mexico, or whether he is able to meet his needs there. The applicant has not asserted that he faces economic hardship in Mexico, and he has not established that his wife would endure financial challenges that rise to the level of extreme hardship.

The AAO recognizes that the applicant's wife would face hardship in Mexico should her dermatitis remain active. However, the applicant has not submitted medical documentation or other reports to show that his wife would face particular problems in Mexico due to climate patterns there. Nor has the applicant established that his wife would be unable to obtain medical care in Mexico for dermatitis. The applicant's wife expressed concern for the availability of adequate medical care in

Mexico should she and the applicant choose to have another child. However, the applicant has not provided any documentation to show that having a child in Mexico has unusual risks due to a lack of medical services.

The applicant's wife stated that she does not wish to be separated from her relatives in the United States. However, as noted above, separation from friends, family, and community is a common consequence when a spouse relocates due to inadmissibility. The applicant has not distinguished his wife's hardship due to separation from her family in the United States from that which is ordinarily expected.

The applicant's wife indicated that she is concerned for her daughter's educational opportunities in Mexico. Yet, the applicant has not shown that his daughter would be unable to attend school or make progress with her education and development should his family reside with him abroad.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will endure extreme hardship should she relocate to Mexico. Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(a)(9)(B)(v) of the Act. 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 regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.