identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: Office: CIUDAD JUAREZ Date: FEB 2 5 2010

IN RE: [redacted]

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 Officer-in-Charge, Ciudad Juarez, and 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 officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated February 16, 2007.

On appeal, the applicant's wife asserts that she will endure hardship if the applicant if prohibited from residing in the United States *Statement from the Applicant's Wife on Form I-290B*, dated February 6, 2007.

The record contains statements from the applicant's wife and her uncle; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's marriage certificate; documentation in connection with the applicant's prior removal from the United States, and; information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering this decision.

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 resided in the United States without a legal immigration status from 1995 until May 2002. Thus, he accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until May 2002, totaling over five 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 endure hardship if the applicant if prohibited from residing in the United States *Statement from the Applicant's Wife on Form I-290B* at 1. She states that she and her daughter are struggling without the applicant. *Id.* She contends that her teenaged daughter will endure particular difficulty if they must withdraw her from her school to relocate to Mexico. *Id.* The applicant's wife states that she is trying not to become a public charge. *Statement from the Applicant's Wife*, dated March 14, 2006. She provides that she and the applicant are experiencing tension due to the fact that she can only see him on weekends. *Id.* at 1. She explains that the applicant is residing in a small town in Mexico approximately 30 miles from the United States border, and that it is difficult for her and her daughter to travel there as a result of isolated roads and security concerns due to a prison located along the route on the Mexican side. *Id.*

An uncle of the applicant's wife, _____ states that the applicant's wife is facing economic difficulty, and that she must to work to support her daughter. *Statement from* [redacted] dated November 18, 2003. lauds the applicant's good character and work ethic, and he indicates that he will employ the applicant when the applicant returns to the United States. *Id.* at 1.

Upon review, the applicant has not shown that his wife will suffer extreme hardship should he be prohibited from entering the United States at the present time. The applicant has not shown that his wife will experience extreme hardship should she remain in the United States without him. The applicant's wife indicated that she is trying not to become a public charge, and her uncle stated that she must to work to support her daughter. However, the applicant has not provided any financial documentation for his wife to show her income or expenses. Thus, the AAO is unable to conclude that she lacks adequate resources to meet her and her daughter's needs.

The applicant's wife indicated that she and the applicant have endured strain on their relationship due to living separately and only visiting on the weekends. Yet, the applicant has not sufficiently distinguished his wife's emotional hardship from that which is 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 (9th 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 (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. *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 described the difficulty she experiences when driving to Mexico to visit the applicant, yet the applicant has not identified where he resides or the route his wife takes to Mexico. Thus, the applicant has not shown by a preponderance of the evidence that his wife faces unusual dangers when traveling to Mexico.

Based on the foregoing, the applicant has not provided adequate explanation or evidence to establish that his wife will suffer extreme hardship should he be prohibited from entering the United States and she remain.

The applicant has not shown that his wife will experience hardship should she relocate to Mexico to maintain family unity. The single hardship noted by the applicant's wife, should she and their daughter relocate to Mexico, consists of hardship the applicant's daughter would encounter due to withdrawing from school in the United States.

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. However, withdrawing a child from school to relocate to another country is a common consequence when a parent must reside abroad due to inadmissibility. The applicant has not shown that his daughter would face unusual hardship should she relocate to Mexico with the applicant's wife, and that such hardship would elevate the applicant's wife's challenges to an extreme level. It is noted that the applicant's daughter was 15-years-old as of the date the Form I-290B appeal was filed, March 13, 2007. As she has or will soon

reach 18 years of age, it is unknown whether she continues to attend school in the United States, such that relocating to Mexico would interrupt her education.

The applicant has not presented any other elements of hardship his wife may encounter in Mexico. In the absence of clear assertions from the applicant, the AAO may not speculate regarding hardship the applicant's wife may face in Mexico. In proceedings regarding a 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. Thus, the applicant has not shown that his wife would endure extreme hardship should she and their daughter relocate to Mexico to maintain family unity.

Based on the foregoing, 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 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)(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.