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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



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
(CDJ 2004 844 238 relates)

Date: **JAN 08 2010**

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)

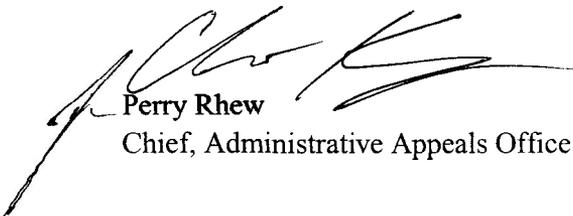
ON BEHALF OF APPLICANT:



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 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. § 1182(a)(9)(B)(v), in order to reside with his U.S. citizen wife and child 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 April 10, 2007.

The record contains, *inter alia*: several letters from the applicant's wife [REDACTED] a letter from [REDACTED] physician; letters from [REDACTED] family members; a copy of a settlement statement for a condominium; a letter from a professional counselor; a copy of a prescription for [REDACTED] copies of [REDACTED] and the applicant's pay stubs; copies of bills and checks; 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 counsel does not contest, that the applicant entered the United States without inspection in October 1998 and remained until February 2006. The applicant accrued unlawful presence of over seven 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, 565-66 (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, the applicant's wife, _____ states that due to her husband's departure from the United States, they have had to sell their condominium. _____ contends that the condominium was on the market for one year and that before it got sold, she had to borrow money from her father-in-law and her siblings. Specifically, she states that she had to borrow \$9,500 from her brother-in-law, \$9,000 from her sister-in-law, \$7,500 from her father-in-law, and \$5,500 from her brother. According to _____ after the sale of the condominium, she was able to repay her brother-in-law and her father-in-law, but not her brother or her sister-in-law. _____ states she and the couple's three-year old daughter are currently living with her husband's parents. She contends her mother-in-law takes care of her daughter while she works full-time as a quality control inspector, earning \$276 per week. _____ claims her mother-in-law is sixty-three years old, is obese, and suffers from hypertension. In addition, _____ states her father-in-law is seventy-three years old and works as a landscaper, earning \$250 per week. According to _____ she and her daughter have become a burden for her in-laws and her father-in-law must continue to work or else she could not send her husband any money. Furthermore, _____ claims she feels completely alone in this world and is in psychotherapy due to her feelings of despair and stress. According to _____, her doctor and her therapist tell her it is urgent that she take a prescription medication for depression, but she contends she does not have enough money to fill

the prescription. *Letter from* [REDACTED] dated July 2, 2008; *Sworn Statement from* [REDACTED] dated May 5, 2007.¹

Letters from [REDACTED] father-in-law and her siblings state that they have loaned [REDACTED] money. *Letter from* [REDACTED] dated July 3, 2008 (letter from [REDACTED] sister-in-law stating that she loaned [REDACTED] \$9,000, which has not been repaid); *Letter from* [REDACTED] dated July 3, 2008 (letter from [REDACTED] brother stating that he loaned [REDACTED] \$5,000, which has not been repaid); *Letter from* [REDACTED] dated July 2, 2008 (letter from [REDACTED] brother-in-law stating that he loaned [REDACTED] \$9,300, which she repaid on May 21, 2008, after the closing of the condominium); *Letter from* [REDACTED] dated July 2, 2008 (letter from [REDACTED] father-in-law stating that he loaned [REDACTED] \$7,500, which she repaid on May 21, 2008, after the closing of the condominium).

A letter from a professional counselor, dated May 4, 2007, states that [REDACTED] has been attending psychotherapy sessions due to depression since April 27, 2007, and that she has been seen three times. According to the counselor, [REDACTED] reported that it has been very difficult for her since her husband departed the United States and that she is worried about her daughter who often cries and asks for her father. The counselor states that “[d]ue to the severity of stressors, and the emotional impact the separation from her husband is having on her mental health it is imperative that [REDACTED] continue psychotherapy treatment.” The counselor further states that [REDACTED] physician prescribed her Lexapro, an anti-depressant. *Letter from* [REDACTED] dated May 4, 2007.

The record also contains two letters from [REDACTED] physician. The more recent letter states that [REDACTED] has been diagnosed with hypothyroidism, fatigue, and depression, and that she has “increased anxiety because [of her] husband’s legal process.” *Letter from* [REDACTED] dated June 26, 2008. The physician’s earlier letter states that [REDACTED] “has the following medical problems[:] headache, migraines, fatigue, hypothyroidism[, and] knee pain. T]hese are chronic situations that could maintain the patient on constant anxiety problems and depression [sic].” *Letter from* [REDACTED] [REDACTED], dated April 25, 2007. A copy of a prescription for Lexapro is contained in the record.

After a careful review of the record evidence, there is insufficient evidence to show that the applicant’s wife has suffered or will suffer extreme hardship if her husband’s waiver application were denied. The AAO recognizes that [REDACTED] has endured hardship and is sympathetic to the family’s circumstances. However, [REDACTED] does not discuss the possibility of moving to Mexico to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her. If [REDACTED] decides to remain in the United States, their situation is typical of

¹ To the extent the record contains letters from [REDACTED] and other documentation written in Spanish, they have not been translated into English, and consequently cannot be considered. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to the United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

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).

With respect to [REDACTED] medical problems, including hypothyroidism, fatigue, headache, migraines, and knee pain, [REDACTED] herself does not mention these health problems in her letters. As such, [REDACTED] does not contend that any of these medical problems affect her daily life, and she does not contend she requires any assistance because of them. In addition, aside from stating “these are chronic situations,” neither of the letters from [REDACTED] physician addresses the prognosis, treatment, or severity of [REDACTED] health conditions. *Letters from [REDACTED] supra*. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

Regarding the letter from the counselor, although the input of any mental health professional is respected and valuable, the AAO notes that the letter was written only one week after [REDACTED] started psychotherapy sessions. *Letter from [REDACTED] supra*. Accordingly, the record fails to reflect an ongoing relationship between a mental health professional and the applicant’s wife. There is no indication in the record that [REDACTED] has continued psychotherapy treatment as recommended. In addition, the letter does not indicate whether any tests were used to evaluate [REDACTED] mental health and, indeed, does not purport to diagnose [REDACTED] with any mental health problem. Moreover, the conclusions reached in the letter do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby diminishing the letter’s value to a determination of extreme hardship.

With respect to the applicant’s financial hardship claim, the AAO does not doubt that [REDACTED] financial situation is precarious. However, without more detailed information, the AAO is not in the position to attribute [REDACTED] financial difficulties to the applicant’s departure. Aside from a single pay stub in the record for the week of January 22, 2006, indicating that the applicant earned \$7.92 per hour that week, the applicant did not submit evidence addressing to what extent he helped to support the family while he was in the country, such as a letter from his previous employer, tax or financial documents, or other documentation regarding his wages. Furthermore, although the record shows that the applicant and his wife lived in a condominium that was sold in May 2008, according to the Settlement Statement in the record, neither the applicant nor his wife were the owners of the condominium. *Settlement Statement*, dated May 15, 2008 (indicating [REDACTED] presumably [REDACTED] brother-in-law, and [REDACTED] were the sellers of the

condominium). In any event, even assuming [REDACTED] owned the condominium and had to sell it due to the financial difficulties she experienced since her husband's departure from the country, the mere showing of economic harm to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *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 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.