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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

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FILE:

Office: MEXICO CITY (CIUDAD JUAREZ)

Date: JAN 08 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).

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 December 7, 2006.

On appeal, the applicant asserts that his U.S. citizen wife will experience extreme hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant on Form I-290B*, dated January 5, 2006.

The record contains, in pertinent part, statements from the applicant and the applicant's wife, 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 May 1999. He remained until approximately January 2006. Accordingly, the applicant accrued over six years of unlawful presence in the United States.¹ 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 asserts that his U.S. citizen wife will experience extreme hardship if the applicant is prohibited from residing in the United States. *Statement from the Applicant on Form I-290B* at 1. The applicant states that he and his wife are purchasing a home, and that it will likely be lost leaving the applicant's wife homeless if the applicant does not return to the United States. *Id.* The applicant asserts that the loss of his wife's job will contribute to her emotional hardship. *Id.* The applicant contends that his wife has four U.S. citizen children who will also endure hardship if the present waiver application is denied. *Id.*

The applicant's wife stated that she and the applicant have a 14-month-old daughter, and that she has three children from a prior marriage who consider the applicant their father. *Statement from the Applicant's Wife*, dated January 19, 2006. She indicated that the applicant has worked hard to

¹ The district director stated that the applicant accrued unlawful presence from May 2001 until July 2005. However, the applicant does not assert, and the record does not show, that he has had a legal immigration status at any point during his prior stay in the United States. Thus, he accrued unlawful presence for his entire stay, from May 1999 until January 2006.

provide their stable home, and that she will be unable to pay the mortgage in his absence. *Id.* at 1. She stated that she may become homeless as a result. *Id.* She asserted that she could lose her job because of the fact that she cannot pay for childcare for their 14-month-old daughter. *Id.* She stated that her children will suffer if they are separated from the applicant, as they will wonder if she can provide shelter, food, and clothing for them. *Id.*

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States. 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 asserted that she will experience economic hardship without the applicant's presence, as she will be unable to pay for their mortgage or childcare. However, the applicant has not provided any documentation of his wife's income or expenses such that the AAO can assess her financial circumstances. The applicant has not submitted evidence to support that he and his wife own a home, such that his wife would have responsibility for a mortgage that is beyond her means. The applicant's wife asserted that she may lose her job, yet the applicant has not provided any evidence of his wife's employment. Nor has the applicant shown that he is unable to work in Mexico and assist his wife and children if needed. Thus, the applicant has not established that his wife will endure significant financial challenges should she remain in the United States without him.

The applicant's wife suggested that she will endure emotional hardship if she remains separated from the applicant. 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 (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 record contains references to hardships that will be experienced by the applicant's and his wife's children. Direct hardship to an applicant's children 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. In the present matter, it is first noted that the applicant has not submitted birth certificates for his or his wife's children, thus the record fails to show by a preponderance of the evidence that he and his wife have children whose care and support will result in additional hardship to his wife. Further, the applicant has not submitted sufficient evidence or explanation to show that his alleged children will suffer significant consequences that will create additional hardship for his wife, such as an unusual economic burden or psychological hardship.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should she remain in the United States without him.

The applicant also has not asserted or shown that his wife will suffer extreme hardship should she relocate to Mexico to maintain family unity. In the absence of clear assertions from the applicant, the AAO may not speculate as to hardships that the applicant's wife may face. 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. Thus, as the applicant has not stated that his wife will suffer hardship in Mexico, he has not met his burden to show that she would experience extreme hardship there.

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 statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.