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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

H₂

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ) Date: **JAN 08 2010**
(CDJ 2005 514 245 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)

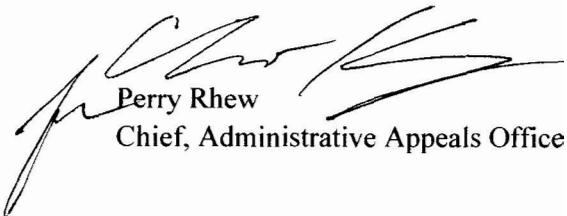
ON BEHALF OF APPLICANT:

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 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 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 March 30, 2007.

The record contains, *inter alia*: four letters from the applicant's wife, [REDACTED] a letter from [REDACTED] social worker; copies of [REDACTED] prescriptions; letters of support, including from the couple's church; a letter from [REDACTED] employer and copies of her pay stubs; copies of bills and other financial documents; 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 the applicant does not contest, that the applicant entered the United States without inspection in August 1999 and remained until April 2006. The applicant accrued unlawful presence of over six 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, [REDACTED], states that she has been suffering from anxiety and depression since her husband's departure, and that she has been going to therapy to treat it. She states she has no family members close by and that it has been very difficult dealing with the separation. According to [REDACTED] she has not been able to sleep or eat well. [REDACTED] claims she takes an anti-depressant as well as Lipitor for high cholesterol. In addition, [REDACTED] states she also suffers from asthma which has become worse due to the separation. [REDACTED] further states that she has been suffering extreme financial hardship since her husband's departure. She contends she has been forced to work two jobs to cover her costs in the United States as well as help her husband in Mexico because he has been unable to find a job there. She states her rent costs \$500 per month, utilities and phone service costs \$200 per month, two car payments cost a total \$780 per month, a loan payment costs \$245 per month, and that they owe \$1,400 in credit card debt. Moreover, [REDACTED] states she would like to study etiology, but that this aspiration has been destroyed because she does not have the time due to her working two jobs and she does not have the funds to pay for classes. *Letters from* [REDACTED] dated April 17, 2007, March 2007, and two undated letters.

A letter from a social worker in the record states that [REDACTED] was seen "on 3/29/07 for depression and anxiety related to the separation from [her] husband, [REDACTED] working two jobs and difficulty covering

expenses.” A follow-up appointment was scheduled for April 10, 2007. *Letter from* [REDACTED] dated March 29, 2007.

The record also contains copies of [REDACTED] prescriptions from February 27, 2007, for Flovent inhalation aerosol and Albuterol. In addition, [REDACTED] was prescribed Amoxil and Lipitor in January and April 2006, as well as “ortho tri-cycl.” and “wellburtrin XL” in March and April 2005. [REDACTED] *Patient Summary*, dated May 1, 2006.

A letter of support in the record describe [REDACTED] as a “very bubbly, vivacious happy woman” who “is not the same lively person” since her husband’s departure. [REDACTED] “has struggled to keep herself together while her husband is away [and t]he separation seems to be taking a toll on her.” According to the letter, [REDACTED] “spirit is always down,” she suffers from migraine headaches and asthma, and seems to always be tired. *Letter from* [REDACTED] dated March 29, 2007; *see also Letter from* [REDACTED] dated March 29, 2007 (stating he “noticed a change in her physical appearance as well as her attitude towards work and others”).

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 her 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 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] asthma and high cholesterol, there is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of [REDACTED] health problems. [REDACTED] does not elaborate or explain how her asthma has purportedly become worse due to the separation from her husband. She does not describe how her health conditions affect her daily life, if at all, and she does not contend she requires any assistance because of her declining health. With respect to [REDACTED]’s purported migraine headaches, *Letter from* [REDACTED] *supra*, [REDACTED] herself does not mention suffering from migraines in any of her four letters in the record. 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 [REDACTED]'s anxiety and depression, the letter from the social worker in the record only confirms that [REDACTED] met with the social worker on March 29, 2007, and lists a date for a follow-up appointment. The letter provides no further, probative information regarding [REDACTED]'s mental health. Therefore, the letter is of minimal value in assessing extreme hardship.

With respect to the financial hardship claim, although the AAO does not doubt [REDACTED] has suffered some economic hardship, there is insufficient evidence that the hardship is extreme. Although there is a letter from the applicant's former employer in the record, *Letter from [REDACTED]* dated April 1, 2007, the letter does not address the applicant's wages. Indeed, the applicant did not submit any evidence, such as tax or financial documents, regarding his wages. As such, there is no evidence addressing to what extent the applicant helped to support the family while he was in the country. Going on record without supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In any event, even assuming some economic difficulty, 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.