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U.S. Department of Homeland Security
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, MEXICO (CIUDAD JUAREZ) Date: **JAN 15 2010**
CDJ 2004 793 198

IN RE: [REDACTED]

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

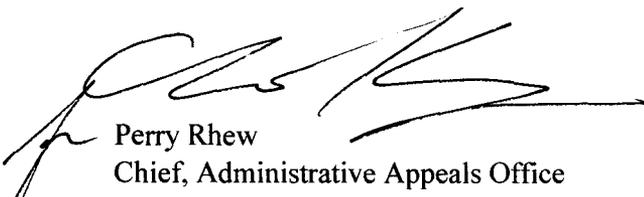
ON BEHALF OF APPLICANT:

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, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 31-year-old 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 in the United States for more than one year. The applicant is married to a citizen of the United States, and he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife and child in the United States.

The District Director found that the applicant failed to establish extreme hardship to his spouse, and denied the application accordingly. *Decision of the District Director*, dated April 9, 2007. On appeal, the applicant contends that the denial of the waiver imposes extreme hardship on his wife and children. *See Form I-290B, Notice of Appeal*, dated May 4, 2007.

The record contains, among other things, a copy of the couple's marriage certificate; several letters and declarations from the applicant's wife discussing the hardships imposed on her as a result of the denial of the waiver; a birth certificate for the couple's U.S. citizen son; medical records for the applicant's wife; and a letter from the applicant's potential employer. The entire record was reviewed and considered in rendering this decision on 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 [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 shows that the applicant entered the United States without being inspected and admitted in or around March, 2003. *See Form I-601, Application for Waiver of Grounds of Inadmissibility*. The applicant's spouse filed a Petition for Alien Relative (Form I-130), which U.S. Citizenship and Immigration Services approved on September 8, 2004. *See Form I-130, Petition for Alien Relative*. The applicant departed the United States in January, 2006. *See Form I-601, supra*. The applicant's unlawful presence for one year or more after April 1, 1997, and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).¹

In order to obtain a section 212(a)(9)(B)(v) waiver for unlawful presence, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280

¹ The District Director erred in characterizing the ground of inadmissibility in section 212(a)(9)(B)(i)(II) of the Act as a "permanent bar to admission." *See Decision of the District Director, supra* at 3. Rather, departure after unlawful presence of one year or more triggers a ten-year bar to admission. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(II).

(Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court affirmed that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.²

The record reflects that the applicant’s spouse, [REDACTED], is a 30-year-old native and citizen of the United States. See *Birth Certificate of [REDACTED]*. The applicant and his wife have been married for six years. See *Marriage Certificate*, dated May 15, 2003. The couple has one U.S. citizen son, who is now five years old. See *Birth Certificate for [REDACTED]*. At the time of the appeal, the applicant’s wife was pregnant with their second child. See *Letter from [REDACTED]*, dated Apr. 24, 2007. The applicant’s spouse asserts that she is suffering extreme medical, emotional, and financial hardships as a result of the denial of the waiver.

The record reflects that [REDACTED] was nine weeks pregnant on April 24, 2007. *Id.* Her doctor recommended “rest at home for a reasonable time” due to the “risk of abortion because she shows an a[b]normal genital bleeding & pain on lower wom[b].” *Id.* [REDACTED] indicated her need for physical and mental rest, and her fear of having a miscarriage. *Letter from [REDACTED]* dated May

² The District Director erred in citing to *Matter of Tin*, 14 I&N Dec. 371 (Reg. Commr. 1973) and *Matter of Lee*, 17 I&N Dec. 275 (Commr. 1978), because these decisions discuss the factors relevant to consent to reapply for admission after deportation from the United States, which are not applicable to this case. Because the AAO is dismissing this appeal after a de novo review, see 5 U.S.C. § 557(b), this error is harmless.

4, 2007. The applicant's wife also stated that the separation from the applicant has caused depression and worry because she does not have a stable job or the necessary income to support herself or her child. *Id.* The record reflects that before the applicant's departure, [REDACTED] was a homemaker, and the applicant worked in construction. *See Forms G-325, Biographic Information.* Although the record does not contain any information regarding the family's income and expenses, [REDACTED] claims that the applicant was primarily responsible for paying the household expenses. *See Letter from [REDACTED] dated Feb. 3, 2006.* [REDACTED] further stated that separation from the applicant has caused emotional hardship to her son, who asks for his father. *See Letter in Support of Appeal, dated Apr. 9, 2007; Letter from [REDACTED], dated May 4, 2007.*

Although the record shows that the denial of the waiver has caused various hardships to the applicant's wife, the evidence is not sufficient to demonstrate that the hardship is extreme. First, although [REDACTED] doctor recommended that she rest during the early stage of her pregnancy to avoid an abortion, he also stated that an ultrasound showed that the fetus had an active heartbeat and indicated "no pregnancy complications." *Letter of [REDACTED] supra.* Moreover, although over two years have passed since [REDACTED]'s letter was written, the record contains no indication of any further difficulties that the applicant's wife faced during her pregnancy; the loss of the fetus or any complications during the birth of the child; or any other evidence that the hardship the applicant's wife faced in connection with their second child was protracted or otherwise extreme.

Second, while the emotional hardship of separation is apparent from [REDACTED] declarations, the applicant did not provide medical records, probative testimony, or other evidence to show that the psychological hardships faced by [REDACTED] are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Third, without evidence of the applicant's income and expenses, the AAO cannot conclude that family separation has caused extreme financial hardship to [REDACTED]. Fourth, any hardships faced by the applicant's son as a result of family separation are not calculated in the extreme hardship analysis, except to the extent that these hardships impact [REDACTED]. Here, the evidence in the record does not indicate that the impact on [REDACTED] renders her hardship extreme.

Finally, the applicant's wife has not presented any other evidence, such as detailed testimony or documentation regarding conditions in Mexico, to support a claim that relocation to Mexico would cause extreme hardship. *See Matter of Cervantes-Gonzalez, 22 I&N Dec. at 565-66* (setting forth relevant factors, including the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate).

In sum, although the applicant's spouse claims hardships based on the denial of the waiver, the record does not support a finding that the difficulties, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez, 96 F.3d at 392; Matter of Pilch, 21 I&N Dec. at 631.* Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship

would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.