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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

H<sub>2</sub>

**JAN 26 2010**

FILE:

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

[REDACTED] relates)

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds 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 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 and seeking readmission within ten years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and is the father of a United States citizen. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 in the United States with his United States citizen wife and son.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated March 16, 2007.

On appeal, the applicant's wife states "[t]he absence of [the applicant] has definitely caused not only an extreme emotional distress in the life of [their] son (a United States Citizen), but to [her] (a United States Citizen) as well." *Statement accompanying the Form I-290B*, filed April 19, 2007.

The record includes, but is not limited to, letters from the applicant's wife, credit card and student loan statements, a letter accepting the applicant's son at the Urban Community School, and the applicant's marriage certificate. The entire record was reviewed and considered in arriving at a 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 [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 the present case, the record indicates that the applicant entered the United States in 1999 without inspection. On August 12, 2002, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On January 29, 2004, the applicant's Form I-130 was approved. On July 23, 2005, the applicant voluntarily departed the United States. On August 4, 2005, the applicant filed a Form I-601. On March 16, 2007, the District Director denied the Form I-601, finding that the applicant had accrued more than a year of unlawful presence and had failed to demonstrate extreme hardship to a qualifying relative.

The applicant accrued unlawful presence from 1999, when he entered the United States without inspection, until July 23, 2005, the date he departed the United States. The applicant is seeking admission into the United States within ten years of his July 23, 2005 departure. The applicant is, therefore, 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 more than one year.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

The AAO notes that the record contains references to the hardship that the applicant's son would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's son will not be considered, except as it may cause hardship to the applicant's wife.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

The AAO notes that the applicant's wife is a native and citizen of the United States and acknowledges that she may experience hardship in relocating to Mexico. In a letter, dated May 14, 2007, the applicant's wife states that if the applicant has to remain in Mexico, she and the applicant's son will have no choice but to leave the United States. She further asserts that, if she moves to Mexico, her education degrees will be useful for nothing but wall decorations and her community work will end, as will her dreams of becoming a lawyer. She further asserts that she will have to sell the home into which she has put a great deal of work and will lose her support system. The applicant's wife also states that the applicant's family dislikes her, the applicant lives in a town where violence and drug activity are prevalent, she does not want her son growing up in this environment, she will not be able to pay her student loans or credit card debt, and her move to Mexico will kill her grandmother who lives for the applicant's son. While the AAO acknowledges the claims made by the applicant's spouse, it does not find the record to support them. The record fails to contain documentary evidence, e.g., country conditions reports on Mexico, that demonstrates that the applicant's wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States, as well as continue to meet her current financial obligations. It also lacks proof that the applicant's wife owns a home that she would be required to sell if she moved to Mexico. Further, the record does not contain any country conditions information that demonstrates that the applicant's wife or son would be at risk in Mexico if they joined the applicant. The record also fails to document how the relocation of the applicant's spouse would affect her grandmother and, in turn, how her grandmother's reaction to her departure would affect the applicant's spouse, the only qualifying relative in this matter. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, the applicant does not establish extreme hardship to his wife if she remains in the United States, maintaining her employment and in close proximity to her family. The AAO notes that as a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of the denial of the applicant's waiver request. In a letter, dated April 16, 2007, the applicant's wife states that she is helping to support the applicant in Mexico because he is unable to find work and that this affects the financial situation of their family. The applicant's wife also states that she is suffering from depression and that her emotional deterioration is affecting her ability to live day-to-day and her job performance. While the AAO notes the applicant's wife statements, it again finds no documentation in the record that supports them. The record does not contain documentary evidence that establishes that the applicant is unable to obtain employment in Mexico or that his wife is providing him with financial assistance. The record also fails to include a psychological evaluation for the AAO to review to determine how the applicant's wife's separation from the applicant is affecting her. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.*

The applicant's wife states that her son needs the applicant's involvement for "healthy development." The applicant's wife states her son "is becoming more rebellious and is acting out." The AAO

acknowledges that the applicant's son may be experiencing hardship in being separated from the applicant. However, as previously indicated, he is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act and the record does not demonstrate how any hardship he may be experiencing would affect his mother, the only qualifying relative. Based on the record before it, the AAO does not find the applicant to have established that his wife would experience extreme hardship if his waiver application were to be denied and she remained in the United States.

United States court decisions have repeatedly 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

A review of the documentation in the record has failed 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) 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.