

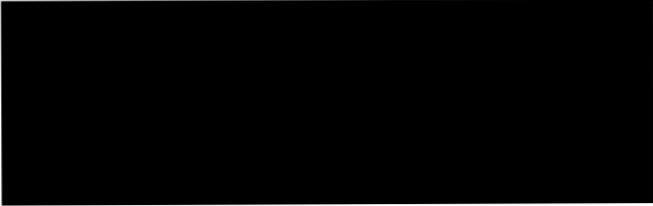
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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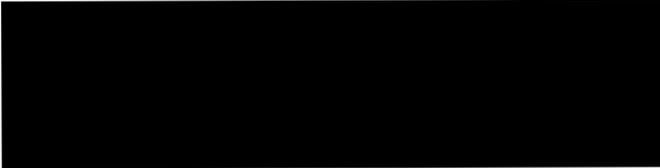
Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

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:



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 children.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant’s spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 17, 2007.

On appeal, the applicant, through counsel, claims that United States Citizenship and Immigration Services (USCIS) denied the applicant a “fundamentally fair hearing/process”, USCIS abused its discretion, and it failed to give appropriate weight to “equitable factors.” *Form I-290B*, filed May 15, 2007.

The record includes, but is not limited to, counsel’s appeal brief, declarations and letters from the applicant’s wife and stepdaughter, and psychological and medical documents regarding the applicant’s wife and son. 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 application, the record indicates that the applicant initially entered the United States in February 1994 without inspection. On August 18, 2004, the applicant's naturalized United States citizen wife filed a Form I-130 on behalf of the applicant. On September 14, 2004, the applicant's Form I-130 was approved. In April 2006, the applicant voluntarily departed the United States. On April 10, 2006, the applicant filed a Form I-601. On April 17, 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 his United States citizen spouse.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until April 2006, when he departed the United States. The applicant is seeking admission into the United States within ten years of his April 2006 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 not directly relevant 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 several references to the hardship that the applicant's son and stepdaughters 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 other family members will be considered only to the extent that it creates hardship for her. Moreover, although the record, by a preponderance of the evidence, establishes that the applicant is the father of a United States citizen son, it does not demonstrate that he also has two stepdaughters who were born in the United States. The letter from Cindy Leguizamo is insufficient proof of her relationship to the applicant or his wife, or her status in the United States. Accordingly, the AAO will not consider hardship to the applicant's stepdaughters even as it relates to his 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.

Counsel claims that the applicant can "demonstrate extreme hardship to his U.S. citizen spouse." *Appeal Brief*, page 1, dated June 22, 2007. He asserts that the responsibility of rearing children in a country as dangerously unsafe and unstable as Mexico would have an emotionally traumatic effect on the applicant's wife and children. In a declaration dated April 7, 2006, the applicant's wife states that if the applicant has to remain in Mexico, she and her children could not follow because "it would mean a loss of [their] family, friends and [their] way of living."

While the AAO notes the claims made by counsel and the applicant's wife, they do not establish that relocation to Mexico would result in extreme hardship for her. The record contains no country conditions reports that establish that conditions in Mexico would pose a risk to the safety of the applicant's family. Neither does it document the mental or emotional impact of relocating to Mexico on the applicant's wife. Further, the AAO again notes that hardship to an applicant's children is not directly relevant to a determination of extreme hardship in section 212(a)(9)(B) proceedings and the record fails to indicate how any hardship that might be experienced by the applicant's son in the present case would affect his mother, the only qualifying relative. 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)).

The AAO notes that medical documentation in the record establishes that the applicant's wife suffers from hypertension, diabetes, and anxiety, and that his son suffers from asthma. However, the applicant's wife is being treated for her medical conditions in Mexico and the record does not indicate that the applicant's son could not receive treatment for his asthma in Mexico or that he has to remain in the United States for medical treatment. Although the record also raises the possibility that the applicant's son has developmental delays as a result of his premature birth, no evidence has been submitted to establish how any developmental challenges he may have would be affected by moving to Mexico or how this particular impact would affect the applicant's wife. Therefore, the record does not establish that the applicant's wife's medical conditions would preclude her relocation to Mexico or that her son's health concerns would create a hardship for her in Mexico.

The AAO also observes that the applicant's wife is employed in the United States, and it has not been established that she has no transferable skills that would aid her in obtaining a job in Mexico or that there are no employment opportunities for her there. Additionally, the AAO notes that the applicant's wife is a native of Mexico and spent her formative years there. Furthermore, it has not been established that the applicant's wife has no family ties in Mexico. Accordingly, based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she joined him in Mexico.

In addition, the record also fails to establish extreme hardship to the applicant's wife if she remains in the United States, maintaining her employment and with access to medical services for her son. 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. Counsel states that if the applicant's waiver is denied, "it will be extremely difficult for [the applicant's wife] to raise her son alone." *Appeal Brief, supra* at 3. Counsel notes that the applicant's son has asthma and it has been hard for his wife to care for her son by herself. *Id.* Counsel also states that when the applicant was in the United States, he "was involved in [the children's] daily lives. He [took] [the] children to school and to...college." *Id.*

To establish the applicant's claim to extreme hardship, counsel also points to the applicant's wife's medical problems and notes that she has been seeing a doctor in Mexico because it is less expensive and that it is financially burdensome for her to carry on like this alone. *Id.* Counsel also asserts that the applicant's wife does not earn enough to make the family's mortgage payments and that she will lose their home if her situation does not improve. *Id.* Counsel further submits a psychological evaluation of the applicant's wife by psychologist [REDACTED] who has diagnosed the applicant's wife with depression and generalized anxiety disorder as a result of her separation from the applicant.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment by [REDACTED] is based solely on three interviews with the applicant's wife, one a joint interview with the applicant's son, over a period of two days. In that the conclusions reached in the submitted assessment are based solely on these interviews, the AAO does not find them to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering them speculative and diminishing their value to a determination of extreme hardship.

The record also fails to provide sufficient evidence to establish that the applicant's wife is experiencing financial hardship in the applicant's absence. During her interviews with [REDACTED], the applicant's wife stated that she was worried about her financial responsibilities, including her mortgage, two car payments, and the repayment of an educational loan for one of her daughters. The applicant's wife also reported that she and her sisters are financially supporting their mother who is unable to work, and that the applicant, although working in Mexico, does not earn enough to help her meet their financial obligations. The record includes copies of mortgage payment coupons, a delinquency notice from the applicant's mortgage company, car loan payments and an overdue notice for a student loan payment. The AAO finds no documentation to establish that the applicant's wife is providing financial support to her mother.

While the AAO acknowledges that the applicant's wife has significant debts, it notes that the record contains no documentation, e.g., W-2 forms, pay stubs or tax returns, that establishes her income from her employment and/or other sources. Absent evidence of the applicant's wife's income, the AAO is unable to determine the extent to which her debts have resulted in financial hardship. Further, the record does not demonstrate that the applicant is unable to assist his wife financially from outside the United States. Although the applicant's wife indicated to [REDACTED] that her husband's income in Mexico was too low to allow him to help her financially, the record does not contain documentation, e.g., country conditions information on earnings in the geographic region where the applicant is employed or for his

occupation, to support this claim. 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)).

Counsel also claims that it will be difficult for the applicant's wife to raise her asthmatic son without the applicant. During her interviews with [REDACTED] the applicant's wife indicated that when her son is ill, she is unable to work as there is no one to care for him. While the AAO notes that [REDACTED] the physician treating the applicant's son, indicates that the first two years of the applicant's son's life were very challenging as a result of his multiple respiratory problems, she currently finds the child's asthma to be well controlled. Therefore, the record does not establish that the applicant's wife would experience significant hardship if she is required to care for their son in the applicant's absence.

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 fails to establish the existence of extreme hardship to the applicant's spouse 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.