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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
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FILE:



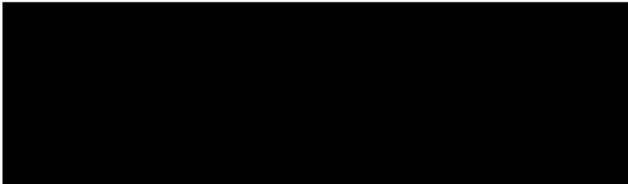
Office: MEXICO CITY (CIUDAD JUAREZ) Date: **JAN 28 2010**
(CDJ 2004 758 113 relates)

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)

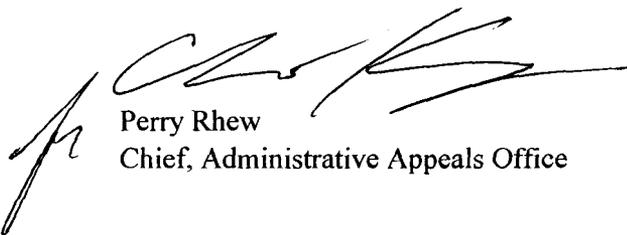
ON BEHALF OF APPLICANT:



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 February 6, 2007.

The record contains, *inter alia*: a letter from the applicant's wife, [REDACTED] a psychological evaluation; 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 admits, that he entered the United States without inspection in 2000 and remained until February 2006. *Brief and Additional Evidence*, dated March 29, 2007. The applicant accrued unlawful presence of over five 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 (BIA) 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 six children from a prior relationship and that all of her children are grown. She states she also has five grandchildren and that the applicant has grown close to her children and grandchildren. [REDACTED] contends the applicant was very supportive when her children's father passed away and that she depends on him emotionally and morally. In addition, [REDACTED] claims the applicant is her main financial support and that if his waiver application were denied, she would experience a great loss emotionally as well as financially. *Letter from [REDACTED]*, dated February 23, 2006.

A psychological evaluation states that [REDACTED] began living with her previous partner when she was eighteen years old and he was thirty-nine years old. According to the evaluation, [REDACTED] previous partner was verbally abusive and "extremely psychologically abusive" to her. He had a stroke which left him paralyzed on one-half of his body and he died in January 2003. The evaluation states that [REDACTED] father also passed away the same year, in June 2003. After her previous partner's death and her father's death, [REDACTED] purportedly became depressed, despondent, and had panic attacks. According to the evaluation, [REDACTED] ended up in the hospital for a full check-up, but "[t]here was nothing physical found to explain her physiological reaction. Doctors explained to her that it was related to the pressure and stress that she was living under with her partner, [REDACTED]" The evaluation further contends that [REDACTED] physician wanted her to go to a psychologist for counseling and psychotherapy, but she did not do so. In addition, the evaluation contends [REDACTED] was offered

medication, but she “refused to take any medications for her psychiatric reactions.” Furthermore, [REDACTED] reported severe headaches, neck pain, no appetite, dizziness, pain and cramping in her left hand, and insomnia. She indicated she cries alone at night, has begun to isolate herself from people, and feels overwhelmed. The evaluation states that she also reported having moments where she hyperventilates and feels a panic attack coming on, but that “she keeps on moving[,] distracting herself to avoid those sensations.” The psychologist states [REDACTED] “has contemplated passive thoughts of suicide or simply dying,” and that she thought about dying or not waking up when she was struggling with her previous partner and when her father passed away. The psychologist states that the results of psychological testing indicate that [REDACTED] has depressive disorder and generalized anxiety disorder. Furthermore, the psychologist states [REDACTED] has been working two jobs since her husband’s departure from the United States, and that “[w]orking two jobs is producing and causing her physical and psychological reactions.” Moreover, according to the psychologist, it is “unrealistic” for [REDACTED] to move to Mexico because she was born in the United States and has no desire to live in Mexico. The psychologist concludes that [REDACTED] has significant symptoms of depression and anxiety, “does not have the psychological resiliency or fortitude to continue living without her husband,” and is at high risk of experiencing a major depressive disorder that would be “quite debilitating and render her psychiatrically disabled.” In addition, the psychologist concludes that [REDACTED] is at high risk of developing a panic disorder which would “compromise her ability to work and take care of herself and her family.” *Psychological Evaluation by [REDACTED]* dated March 19, 2007.

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, aside from the psychologist’s statements that [REDACTED] cannot move to Mexico because she was born in the United States and has no desire to live in Mexico, *Psychological Evaluation by [REDACTED] supra*, significantly, [REDACTED] herself 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 (BIA) 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).

Regarding the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record appears to be based on a single

interview the psychologist conducted with [REDACTED]. As such, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife. The conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby diminishing the evaluation's value to a determination of extreme hardship. Furthermore, the applicant did not submit his wife's medical records or other evidence to support her assertion (as related to the psychologist) that she was hospitalized after experiencing panic attacks due to the deaths of her previous partner and her father, and that her physician recommended medication and counseling. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of [REDACTED] mental health or any treatment and assistance needed.

With respect to the financial hardship claim, the applicant did not submit any financial or tax documents. As such, there is no evidence addressing to what extent the applicant helped to support the family while he was in the country. Similarly, there no evidence addressing [REDACTED] wages or her regular, monthly expenses such as rent. 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).

Finally, to the extent counsel claims [REDACTED] is the caretaker of her grandchildren, *Brief and Additional Evidence, supra*, there is no suggestion in the record that [REDACTED] cares for her grandchildren. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.