

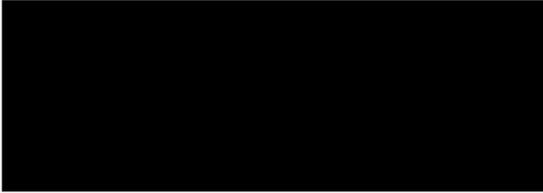
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date: **APR 23 2009**
(CDJ 2002 805 432 relates)

IN RE:



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

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).

John F. Grissom
Acting 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 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with his U.S. citizen wife and children.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated May 22, 2006.

On appeal, the applicant's wife asserts that she will suffer extreme hardship should the applicant be prohibited from entering the United States. *Statement from the Applicant's Wife on Form I-290B*, submitted July 6, 2006.

The record contains statements from the applicant's wife; copies of birth certificates for the applicant and the applicant's children; copies of medical documents for the applicant's wife (to show that she was pregnant with their third child); copies of bills and financial documents for the applicant and his wife; a copy of the applicant's marriage certificate, and; documentation in connection with the refusal of an immigrant visa for the applicant, including explanation of his unlawful presence in the United States. The entire record was reviewed and considered in rendering 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 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.

The record reflects that the applicant entered the United States without inspection in or about October 1997. He remained until he voluntarily departed in April 2003. Accordingly, the applicant accrued over five years of unlawful presence in the United States. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of 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.

On appeal, the applicant's wife asserts that she will suffer extreme hardship should the applicant be prohibited from entering the United States. *Statement from the Applicant's Wife on Form I-290B*, submitted July 6, 2006. The applicant's wife states that she is the primary care giver for her and the applicant's three children, ages six, two, and two months. *Id.* at 1. She explains that she works a night shift, and that it is difficult and costly to secure childcare services. *Id.* She provides that when she is unable to obtain childcare assistance, she misses work which results in a loss of wages. *Id.* The applicant's wife states that she is responsible for her mortgage, utilities, and other expenses. *Id.* She notes that her children go to Mexico during the summers to reside with the applicant, yet the savings in childcare costs is counterbalanced by the cost of transportation to and from Mexico. *Id.* The applicant's wife explains that she wishes to stop working and become a housewife and full-time

care giver for her children, suggesting that the applicant's presence is necessary for her to realize this goal. *Id.*

In a prior statement, the applicant's wife asserted that her children are physically healthy, but that they require the applicant to grow up emotionally healthy. *Statement from the Applicant's Wife*, dated December 19, 2005. She indicated that the applicant is not working in Mexico, thus she is the sole provider for her family. *Id.* at 1. She stated that the applicant would be able to work in the United States to help support the family should he be permitted to return. *Id.*

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The applicant's wife discusses economic hardship she is experiencing in the applicant's absence. The applicant's wife indicated that she is experiencing economic hardship due to the applicant's absence. Yet, the applicant has not submitted documentation of his wife's income, employment, or other financial resources, such that the AAO can determine her ability to meet her needs. The applicant's wife stated that the applicant is not working in Mexico, yet the applicant has not stated why he is not working, or indicated whether he has sought employment to help meet his requirements and alleviate any need for his wife's support. The AAO acknowledges that acting as a single parent with three children often presents economic and childcare challenges. Yet, without sufficient documentation on the applicant's wife's financial position, the AAO is unable to conclude that the applicant's absence is causing her significant economic hardship.

The applicant's wife suggested that she is experiencing emotional hardship due to separation from the applicant. Yet, the applicant has not shown that his wife is experiencing emotional consequences that are greater than those commonly experienced by spouses who are separated due to inadmissibility. U.S. court decisions have 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, *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. *Hassan v. INS*, *supra*, 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.

The applicant's wife referenced hardships to the applicant's children. Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and

deportation. The applicant has not shown that any hardship to his children due to separation from him will elevate his wife's challenges to extreme hardship.

The applicant has not asserted or shown that his wife would experience hardship should she relocate to Mexico to maintain family unity. Thus, the applicant has not shown that his wife would experience extreme hardship should she join him.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should he be prohibited from entering the United States, whether she remains without him in the United States or joins him in Mexico. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.