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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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**U.S. Citizenship
and Immigration
Services**



H3

FILE: [REDACTED] Office: CIUDAD JUAREZ Date: **APR 28 2009**

CDJ 2004 677 249

IN RE: [REDACTED]

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 PETITIONER:

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, 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 Officer in Charge, Ciudad Juarez, Mexico, and 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 resided in the United States from 1993, when he entered without inspection, until August 2005, when he returned to Mexico. He was found to be inadmissible to the United States under 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 a period of one year or more. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. He 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 return to the United States and reside with his spouse.

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer in Charge* dated September 25, 2006.

On appeal, the applicant asserts that states that U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant had not established extreme hardship to his U.S. citizen wife if he is denied admission to the United States. Specifically, the applicant states that his wife and stepson are suffering emotional hardship due to separation from the applicant. *See Applicant's Brief in Support of Notice of Appeal* at 4-5. The applicant's wife further states that she is suffering financial hardship due to loss of the applicant's income and has had to take a second job in order to maintain her household and support the applicant in Mexico. *See Affidavit of [REDACTED]*, dated October 21, 2006, at 3. In support of the waiver application and appeal applicant submitted affidavits from himself and his wife, a letter from a psychologist who evaluated the applicant's wife, a copy of a divorce judgment and child custody order concerning the applicant's stepson, copies of family photographs, a letter from the applicant's stepson, documentation related to the mortgage on the home owned by the applicant's wife, documentation concerning the purchase of an automobile by the applicant's wife, bank statements, a letter from the applicant's wife's employer and documentation related to her second job. 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:

- (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 Secretary, 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 contains references to hardship the applicant's stepson would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

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

U.S. court decisions have additionally 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 BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-five year-old native and citizen of Mexico who resided in the United States from February 1993, when he entered without inspection, to August 7, 2005, when he returned to Mexico. The applicant married his wife, a thirty-four year-old native and citizen of the United States, on March 21, 2003. The applicant currently resides in Mexico and his wife resides in Sanger, California with her son.

The applicant asserts that his wife is suffering extreme emotional and psychological hardship due to separation from the applicant and the effects of the separation on her son as well as financial hardship due to loss of his income. *Brief* at 4-5; *Affidavit of* [REDACTED], dated October 21, 2006, at 3. In support of this assertion counsel submitted a letter from a psychologist who evaluated the applicant's wife on October 5, 2006. The letter states that the applicant's wife reported having "excessive worry, restlessness, muscle tension, and headaches" as well as various depressive symptoms. *Letter from* [REDACTED], dated October 19, 2006. The letter further states that the applicant's wife was prescribed Prozac and Xanax by her treating physician and that it appears these are the appropriate medications for the symptoms described by the applicant's wife. *Id.* Dr. [REDACTED] further states that she is of the opinion that the applicant's wife "will need further counseling sessions as well her (sic) medication to obtain maximum medical benefit." *Id.*

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a psychological evaluation of the applicant's wife, 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 one interview, do not reflect the insight that would result from an established relationship with the psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The applicant's wife states in her affidavit that she has experienced sadness, a sense of desperation, and anxiety since the applicant was found to be inadmissible at his consular interview and she had to return to the United States without him. *Affidavit of* [REDACTED] at 3. She further states that her son has been worried about the applicant and has not participated in sporting activities since the applicant's departure from the United States. *Affidavit of* [REDACTED] at 2. The evidence on the record does not establish, however, that any emotional difficulties the applicant's wife would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her distress caused by the prospect of being separated from her husband 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 deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant's wife states that since the applicant departed the United States she has experienced financial hardship because she has lost his income and must also help support him in Mexico. *Affidavit of* [REDACTED] at 3. She states that she has had to refinance her home to pay the family's unpaid bills and has taken on a second job to help her to maintain two households. *Id.* The record contains documentation concerning the refinancing of the applicant's wife's home and the purchase of a truck in 2005 and indicates that the applicant is employed with a medical services company and also cares for children in her home. No further documentation was submitted with the waiver application or appeal concerning the income, expenses, or overall financial situation of the applicant's wife or the applicant's income when he resided in the United States. Further, there is no indication that there are

any ongoing unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of separation from the applicant. Any financial impact of the loss of the applicant's income therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The emotional and financial hardship the applicant's wife would experience if he is denied admission and she remains in the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship). No claim was made that the applicant's wife would suffer extreme hardship if she relocated to Mexico with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's wife would suffer extreme hardship if she moved to Mexico.

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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. 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.