

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

43

FILE:

(CDJ 2004 698 136)

Office: MEXICO CITY (CIUDAD JUAREZ) Date: FEB 19 2009

IN RE:

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:

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).

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom, Acting 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 applicant is a native and citizen of Mexico who resided in the United States from 1997, when he entered without inspection, until June 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 one year or more. The applicant is the spouse of a U.S. Citizen and 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 wife.

The district director 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 District Director* dated May 22, 2006.

On appeal, counsel for the applicant states that the applicant's wife suffers from diabetes and high blood pressure and her condition has been exacerbated by stress caused by separation from the applicant. *Statement of Counsel in Support of Appeal* dated May 26, 2006. Counsel further asserts that the applicant's wife broke her arm and was unable to work for several months after the injury, leading to medical and economic hardship. *Id.* In support of the waiver application and appeal counsel submitted a declaration from the applicant's wife, family photographs, medical records for the applicant's wife, and a letter from the applicant's wife's doctor. 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.

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 (9<sup>th</sup> 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 (9<sup>th</sup> 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-six year-old native and citizen of Mexico who resided in the United States from 1997, when he entered the country without inspection, to June 2005, when he returned to Mexico. The applicant's wife is a fifty-six year-old native and citizen of the United States whom the applicant married on January 25, 2003. The applicant currently resides in Mexico and his wife resides in Mount Pleasant, Texas.

Counsel for the applicant states that the applicant's wife is suffering physical and financial hardship as a result of being separated from the applicant. Counsel states that the applicant's wife is experiencing stress due to the separation and this is exacerbating her medical conditions, including high blood pressure and diabetes. In support of these assertions, counsel submitted copies of her medical records, including clinical laboratory reports and records from a clinic where she received care in 2005. These records contain medical terminology, abbreviations and handwritten notes, some of which are illegible. The documents submitted do not contain any detailed explanation written in plain language of the exact nature and severity of the applicant's wife's medical condition, any treatment necessary, or any family assistance needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed.

Counsel asserts that the applicant's wife is suffering financial hardship because she is unable to work as a result of a broken arm, and in support of this assertion he submitted a letter from the Choctaw Nation Health Services Authority dated April 23, 2006. The letter states that the applicant's wife "sustained a right wrist fracture approximately 6 weeks ago and then developed a somewhat

common complication.” *Letter from [REDACTED] Choctaw Nation Health Services Authority*. The letter further states that the applicant’s wife has limited use of the hand, is starting physical therapy, and might need four to six months to recover from the injury. *Id.* The applicant’s wife states in her declaration that due to the March 2006 injury, she was unable to use her right hand or to work at that time, which has caused a financial burden for her since the applicant is in Mexico. *Declaration of [REDACTED] dated June 5, 2006*. The AAO notes that although the applicant’s wife was temporarily unable to work due to this injury, the evidence on the record indicates that she was expected to recover within four to six months, and there is no evidence that the applicant’s wife would be unable to work and support herself financially after that time. The AAO further notes that no documentation concerning the applicant’s income and employment when he was in the United States was submitted to support an assertion that the applicant’s wife has suffered or would suffer financial hardship as a result of separation from the applicant. 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. 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 husband. *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 applicant’s wife further states that when the applicant was in the United States, they did everything together and their family life was happy, and being separated from the applicant has caused her to experience emotional hardship. *Declaration of [REDACTED]* She states, “I try and control my stress but with all the worries on me by myself I am overly stressed. I miss my husband extremely (sic) he is my spiritual support . . .” *Id.* There is no evidence on the record, however, concerning the applicant’s wife’s mental health or the potential emotional or psychological effects of the separation. The evidence on the record does not establish that the emotional effects of separation from the applicant are more serious than the type of hardship a family member would normally suffer when faced with the prospect of a spouse’s removal or exclusion. Although the depth of her distress over 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 removal 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 further states that she would suffer hardship in Mexico “because of the cultural change, language, and the environment in Mexico.” *Declaration of [REDACTED]* She further states that she is reluctant to reside in Mexico because she contracted a hepatitis infection during a previous visit there and now has chronic hepatitis, and she fears that her medical condition would be affected in Mexico and that she would be unable to work there. *Id.* Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record does not establish, however, that the applicant’s wife’s condition is so serious that she would suffer extreme hardship if she were to relocate to Mexico. As noted above, the record contains medical records and laboratory reports, but no detailed information concerning the nature

and severity of any medical condition. The AAO further notes that no documentation concerning economic conditions or access to medical care in Mexico was submitted, and no documentation was submitted to support the applicant's wife's assertion that she suffers from chronic hepatitis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 emotional and financial hardship the applicant's wife would experience if he is denied admission to 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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).

In this case, the record does not contain sufficient evidence to show that the 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.