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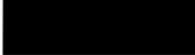
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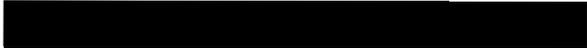


Office: CIUDAD JUAREZ

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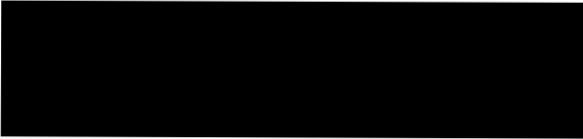
JAN 15 2009

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), and Section 212(h) of the Act, 8 U.S.C. § 1182(h)

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 Officer in Charge, Ciudad Juarez, Mexico. 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 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 section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), and section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his wife and children in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to his U.S. citizen spouse. The officer in charge further found that the applicant failed to submit evidence of rehabilitation or that his admission would not be contrary to the safety or security of the United States. The officer in charge denied the application accordingly. *Decision of the Officer in Charge*, dated February 28, 2006.

On appeal, counsel contends that the applicant did, indeed, establish extreme hardship to his U.S. citizen spouse as well as rehabilitation. In addition, counsel claims that the officer in charge incorrectly used the “extraordinary relief” standard instead of the “extreme hardship” standard.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED], indicating they were married on February 21, 1995; a Psychological Report for the applicant; a letter from [REDACTED]; copies of conviction documents; copies of the couple’s tax records; report cards and certificates for the couple’s children; and copies of water, electric, phone, and gas bills. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent part:

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 record indicates, and the applicant does not contest, that he entered the United States without inspection in April 1979. On May 24, 1987, the applicant was arrested and charged with attempted robbery and receiving stolen property. He was convicted of attempted robbery and sentenced to sixteen months imprisonment. On March 8, 1988, the applicant was deported. In April 1989, the applicant again entered the United States without inspection and stayed until April 2005 when he left the country. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in April 2005. Therefore, the applicant accrued unlawful presence of eight years. He now seeks admission within ten years of his April 2005 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), 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 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. § 212(a)(9)(B)(v).* Hardship the applicant himself, or his children, may experience is not a permissible consideration under the Act. *Id.* 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).*<sup>1</sup>

*Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999)* provides a list of factors the Board of Immigration Appeals 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

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<sup>1</sup> The applicant is also inadmissible under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude based on his attempted robbery conviction and counsel does not contend otherwise. Because, as explained *infra*, the applicant has not met his burden of establishing eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), it is unnecessary to determine whether the applicant has established eligibility for a waiver under section 212(h) of the Act, 8 U.S.C. § 212(h).

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.

contends her life and her well-being would be greatly affected if her husband's waiver application is denied. She claims that her husband has the higher income and that she will not be able to meet the family's monthly expenses without her husband's income. She further states that she works part-time and cares for her children, and that getting a full-time job would interfere with her children's welfare. She states that she and her children love the applicant and would hate to be apart from him. She also contends that she could not live off of public assistance and would have no alternative but to go to Mexico with her husband. She claims her children speak very little Spanish and are accustomed to the American way of life. *Letter from [REDACTED]*, dated June 2, 2004.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that [REDACTED] will endure hardship as a result of the denial of her husband's waiver application and is sympathetic to the family's circumstances. However, if she remains 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 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).

Counsel's assertions that the officer in charge erred by relying on older caselaw and incorrectly using an "extraordinary relief" standard instead of the "extreme hardship" standard, *Appeal Brief* at 5-10, are unpersuasive and, in any case, do not change the analysis or outcome of this case. Counsel's reliance on the Ninth Circuit's decision which found that "the most important single hardship factor may be the separation of the alien from family living in the United States," *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), is unpersuasive as nothing in that decision requires a finding of extreme hardship based solely on separation from family. In the instant case, the officer in charge explicitly analyzed the case under the extreme hardship standard and adequately considered (and rejected) the applicant's contention that separation from family members would constitute extreme hardship. *Decision of the Officer in Charge, supra* at 4 ("[the applicant and his wife] speak of normal

problems associated with separation. There are no statements that indicate hardships that rise to the level of extreme hardships.”); *cf. Salcido-Salcido*, 138 F.3d at 1293 (“the BIA abused its discretion because it failed to consider the hardship to Salcido and her U.S. children”).

Furthermore, there is insufficient evidence in the record to show that [REDACTED] would suffer extreme financial hardship if her husband’s waiver application were denied. Although there are copies of several bills in the record, there is no other information regarding the family’s expenses, such as documentation of rent or mortgage.<sup>2</sup> In addition, copies of the couple’s joint tax returns in the record do not indicate to what extent the applicant financially supported his family. According to the most recent tax documents in the record, in 2002, [REDACTED] worked three different jobs, earning a total of \$22,234. *See 2002 Wage and Tax Statements (Form W-2) for [REDACTED]* (stating that [REDACTED] earned \$5,674 from [REDACTED], \$4,818 from [REDACTED], and \$11,742 from [REDACTED]). Notably, only [REDACTED] income is reported as wages on the couple’s joint tax return. *See 2002 U.S. Individual Income Tax Return (Form 1040)*, undated (listing wages as \$22,234). There is no indication in the record that the applicant earned any income in 2002 and, in fact, the couple’s tax return lists a business loss of \$3,867. *Id.* Similarly, in 2001, [REDACTED] worked two jobs, earning a total of \$24,156, the only income reported as wages on the couple’s joint tax return. *See 2001 Wage and Tax Statements (Form W-2) for [REDACTED]* (stating that [REDACTED] earned \$14,401 from [REDACTED], and \$9,755 from [REDACTED]); *2001 U.S. Individual Income Tax Return (Form 1040)*, undated (listing \$24,156 as the couple’s total wages). Again, there is no documentation that the applicant earned any income in 2001 and the couple’s tax return lists a business loss of \$2,034. There is no documentation in the record that the applicant owns a business and, thus, the source of these business losses is unclear. 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 hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also 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).

In addition, there is insufficient evidence to show that [REDACTED] would experience extreme hardship if she moved to Mexico with her husband to avoid the hardship of separation. Her contention that it would be “unfair for [her] family because [they] are American citizens and deserve and wish to remain in [the United States,]” *Letter from [REDACTED] supra*, does not rise to the level of extreme hardship. There is no evidence [REDACTED] could not obtain employment in Mexico. In addition, there is no indication in the record that [REDACTED] is not in good health, and she does not contend she is unfamiliar with the Spanish language.

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<sup>2</sup> The mortgage interest statement in the record does not indicate the couple’s monthly mortgage payment.

Finally, the AAO notes that the officer in charge did not err in finding that the applicant failed to submit evidence of rehabilitation. *Decision of the Officer in Charge* at 4-5. The Psychological Report in the record specifically finds that the applicant “is in denial regarding his drug use[,] . . . has a tendency to lie[, and] hasn’t been in any rehabilitation program; therefore it is necessary . . . in the future.” *Psychological Report, supra*.

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)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), 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.