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Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: JUN 25 2009
(CDJ 2004 744 127 relates)

IN RE: [REDACTED]

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:

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

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.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated July 7, 2006.

On appeal, the applicant asserts that his wife will suffer extreme hardship should he be prohibited from entering the United States, and that the district director failed to adequately assess the presented elements of hardship. *Statement from the Applicant on Form I-290B*, received April 8, 2006.

The record contains statements from the applicant's wife and friends, a brief from an attorney with Nevada Hispanic Services¹; a copy of the naturalization certificate for the applicant's wife; a copy of an insurance bill for the applicant's wife; documentation regarding the applicant's wife's workplace injury; a copy of the applicant's marriage certificate, and; information regarding the applicant's 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.

¹ The applicant appears to be represented; however the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. All representations will be considered but the decision will be furnished only to the applicant.

(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 September 2001. He remained until he voluntarily departed on or about July 27, 2005. Accordingly, the applicant accrued over three 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 asserts that his wife will suffer extreme hardship should he be prohibited from entering the United States, and that the district director failed to adequately assess the presented elements of hardship. *Statement from the Applicant on Form I-290B*, received April 8, 2006.

The applicant's wife stated that she will experience significant emotional hardship if the applicant is not permitted to return to the United States. *Statement from the Applicant's Wife*, dated September 13, 2005. She asserted that she cannot relocate to Mexico. *Id.* at 1. She indicated that she was born in El Salvador and she immigrated to the United States over 23 years ago. *Id.* She explained that her

children reside in the United States and that they are a close family. *Id.* She stated that she would be compelled to give up her employment in the United States should she depart. *Id.* She provided that she is part of her church community and she has seven grandchildren from ages five to 13. *Id.* at 1-2. She expressed that she does not wish to be separated from her community or family members in the United States. *Id.* at 2. She stated that she does not have any close relatives in Mexico. *Id.* She noted that all of her siblings are from El Salvador and they all reside in the United States. *Id.*

The applicant submitted statements from his friends who attest to his good character.

The applicant submitted documentation to show that his wife bruised her right shoulder and hip in a workplace accident on or about June 1, 2006.

The applicant submitted a brief from an attorney, F. Woodside Wright, in support of the appeal. Mr. Wright asserted that the district director referenced legal precedent that is not relevant to the present matter. *Brief from F. Woodside Wright*, dated August 23, 2006. Mr. Wright contends that the facts in *Matter of Tin*, I&N Dec. 371 (Reg. Comm. 1973), are not similar to the facts of the present matter, as the applicant in question sought reentry after deportation, and there were no U.S. citizen relatives under consideration. *Id.* at 2-3. Mr. Wright indicated that *Matter of W*, 9 I&N Dec. 1 (BIA 1960), presented hardship factors that are less compelling than those in the present matter. *Id.* at 3. Mr. Wright stated that *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), “provides no assistance to the adjudicator.” *Id.* at 3.

Mr. Wright distinguished the facts of *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), from those in the present matter, and asserted that the present matter does not focus primarily on economic matters and denial of the waiver application will result in family separation. *Id.* at 3-4.

Mr. Wright asserted that, should the present waiver application be denied, the applicant’s wife will be compelled to choose between residing in the United States close to her children and grandchildren, or relocating to Mexico to maintain unity with the applicant. *Id.* at 5.

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 has not shown that his wife will experience extreme hardship should she remain in the United States without him. The applicant’s wife explained that she has extensive ties to the United States, including her family members and community. Should she remain, she will not endure the emotional consequences of separation from her community and family. The applicant has not asserted or shown that his wife would be unable to meet her economic needs in his absence.

Thus, should the applicant’s wife remain, her primary hardship would be the emotional effects of living apart from the applicant. The AAO acknowledges that the separation of spouses often results in significant emotional hardship. However, the applicant has not distinguished his wife’s hardship from that which is commonly expected when family members live apart 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 provided documentation relating to a workplace injury his wife sustained. However, the record does not show whether the applicant’s wife continues to experience consequences as a result of the accident, whether she requires ongoing medical care, or whether it has affected her ability to work. Thus, the applicant has not shown that his wife’s present physical condition is elevating her level of hardship.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should she remain in the United States without him.

The applicant has not shown that his wife would experience extreme hardship should she relocate to Mexico to maintain family unity. The AAO acknowledges that the applicant’s wife wishes to reside in the United States near her children, grand children, and community. Yet, the applicant has not shown that his wife would face unusual consequences should she be separated from them. See *Hassan v. INS*, 927 F.2d at 468.

The applicant’s wife stated that she has resided in the United States for a lengthy duration. The AAO acknowledges that unwillingly relocating abroad after a long residence in the United States constitutes hardship. Yet, as a native of El Salvador, it is likely that the applicant’s wife is familiar with Central American culture and the Spanish language, thus the applicant has not shown that she would have difficulty adapting to life in Mexico. The applicant has not shown that he and his wife would be unable to work in Mexico to meet their economic needs, or that his wife would be unable to visit her family in the United States.

While Mr. Wright asserted that *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), “provides no assistance to the adjudicator,” he did not identify a basis for his conclusion or discuss the facts of the cited matter.

Mr. Wright distinguished the facts of the present matter with those in *Matter of W*, 9 I&N Dec. 1 (BIA 1960), and *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). It is noted that the district director cited *Matter of W* and *Matter of Pilch* to stand for general propositions of law. Specifically, the cited matters reflect that the applicant must distinguish the hardship to his wife from that which is commonly expected when family members relocate or are separated due to inadmissibility. The district director did not base his decision on a comparison of the facts of the cited matters with those in the instant case. Thus, the district director’s references to *Matter of W* and *Matter of Pilch* were proper.

It is noted that, while Mr. Wright took issue with the district director's use of precedent cases, he did not reference any additional cases that support the applicant's claims. The AAO does not conclude that the district director misapplied the legal standard for extreme hardship.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should she join him in Mexico or remain in the United States. Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife. Section 212(a)(9)(B)(v) of the Act. 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) 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.