

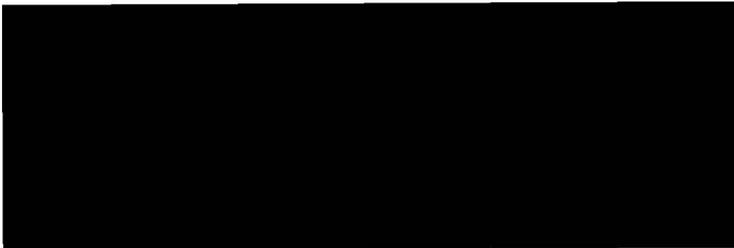
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



H3

FILE:



Office: MEXICO CITY

Date:

MAR 03 2009

IN RE: Applicant:



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, 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 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 remain in the United States and reside with his U.S. citizen 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 for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 20, 2006.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is prohibited from entering the United States. *Brief from Counsel*, submitted May 18, 2006.

The record contains a brief from counsel in support of the appeal; medical documentation for the applicant's wife; a statement from the applicant's wife; mortgage documents for the applicant's wife; copies of bills for the applicant's wife; evidence of the applicant's income; documentation relating to the applicant's wife's academic studies; and a copy of the applicant's marriage certificate. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) 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 February 1999. He remained until he voluntarily departed in or about April 2005. Accordingly, the applicant accrued over six 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)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. 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, counsel asserts that the applicant's wife will suffer extreme hardship should the applicant be prohibited from entering the United States. *Brief from Counsel* at 1-2. Counsel states that the applicant's wife requires emotional, psychological, and economic support. *Id.* at 2. Counsel asserts that denial of the present application will result in forced separation. *Id.* at 3. Counsel explains that the applicant and his wife were married on June 15, 2002. *Id.* He indicates that the applicant's wife had a miscarriage in February 2005, and that she has endured significant emotional hardship as a result. *Id.* Counsel contends that separation from the applicant is exacerbating the applicant's wife's emotional hardship. *Id.* He states that the applicant's wife lacks financial resources to visit the applicant often. *Id.*

Counsel indicates that the applicant's wife can't relocate to Mexico, as she must remain in the United States to work to support herself and the applicant. *Id.* Counsel states that unemployment is high in Mexico, and that the applicant's wife would have difficulty finding work. *Id.* Counsel provides that the applicant's income in the United States is important to the applicant's wife, as the applicant's wife will require two or more jobs to earn sufficient income. *Id.* at 5.

Counsel states that the applicant's wife's doctor indicated that the applicant's wife's next pregnancy should be monitored, and that healthcare in Mexico is likely inferior. *Id.* at 4. Counsel contends that the applicant and his wife cannot have a family in Mexico. *Id.*

In a prior statement, the applicant's wife asserted that she is experiencing significant emotional difficulty due to having a miscarriage. *Prior Statement from Applicant's Wife*, dated March 24, 2005. She explained that she wishes to continue her education, yet she is having trouble concentrating. *Id.* at 2. She stated that she may seek public assistance, and that her marriage will be broken if the applicant is not permitted to return to the United States. *Id.*

The applicant's wife states that she is experiencing depression due to separation from the applicant. *Statement from the Applicant's Wife*, dated November 23, 2005. She states that she is unable to accompany the applicant to Mexico, as she has obligations in the United States. *Id.* at 2.

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 states that she is experiencing emotional hardship due to separation from the applicant. She explains that this hardship is compounded due to the fact that she had a miscarriage. However, the applicant has not established that his wife will experience emotional hardship that is greater than that commonly expected when spouses 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.

Counsel contends that the applicant and his wife are unable to realize their desire to have children unless the applicant is permitted to reside in the United States. Yet, the applicant has not provided any medical documentation to show that she is at risk of a future miscarriage, or that she otherwise requires unusual medical supervision in order to have a successful pregnancy. Nor has the applicant provided documentation to show that his wife would not have access to any required medical care in Mexico. Thus, the applicant has not shown that he and his wife are unable to have children unless he enters the United States.

Counsel asserts that the applicant's wife works in the United States to meet her and the applicant's needs. However, the applicant has not provided sufficient documentation or explanation of his wife's income or their expenses such that the AAO can evaluate the economic impact the applicant's absence is having on his wife. Nor has the applicant described any efforts he has made to secure employment in Mexico, or otherwise established that his wife must work in the United States to sustain him abroad. The applicant has not shown by a preponderance of the evidence that his wife will endure significant economic hardship due to his absence.

The applicant's wife stated that she cannot relocate to Mexico to maintain family unity due to her obligations in the United States. Yet, the applicant has not described any obligations his wife has. Nor has the applicant discussed whether his wife has ties to Mexico, such as family members residing there. The applicant has not indicated whether his wife speaks Spanish or has experience traveling in Mexico. Accordingly, the applicant has not shown that his wife is unable to join him abroad.

Based on the foregoing, the applicant has not shown that denial of the present waiver application would result in extreme hardship to his wife. 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.