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20 Massachusetts Ave. N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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H/3

FILE:



Office: CIUDAD JUAREZ

Date: MAR 05 2009

(CDJ 2005 531 147 relates)

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)

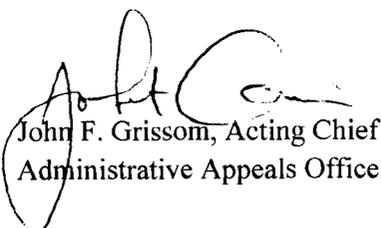
ON BEHALF OF APPLICANT:

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).

  
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 to section 212(a)(9)(B)(i)(II) of 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. 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), in order to reside with his wife and step-daughter in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the Officer in Charge*, dated April 10, 2006.

On appeal, the applicant's wife, [REDACTED], claims she has suffered extreme hardship since her husband left the United States.

The record contains, *inter alia*: a copy of the marriage license of the applicant and his wife, Ms. [REDACTED] indicating they were married on November 23, 2003; letters from [REDACTED] a letter from [REDACTED] daughter; a copy of [REDACTED] daughter's birth certificate and her school records; a copy of the couple's bank account statement; a copy of a prescription; letters from [REDACTED] employer; letters of support from family members; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

In this case, the officer in charge found, and the applicant does not contest, that the applicant entered the United States in January 2003 without inspection and remained for over one year until January 2004. The applicant, therefore, accrued unlawful presence for over one year. He now seeks admission within ten years of his 2004 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Hardship the applicant's children or step-children may experience is not a permissible consideration under the statute. *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).

*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 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.

It is not evident from the record that the applicant has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

In this case, [REDACTED] states that after her husband left the United States, she has suffered from stress, depression, insomnia, and a diminished appetite. [REDACTED] states that she cannot concentrate at work, is suffering from chest palpitations, and has been taking a prescription, Xanax. She further states that her daughter from a previous relationship misses the applicant. In addition, [REDACTED] claims that she has been suffering extreme financial hardship since the applicant's departure from the United States because she makes only \$1,700 per month and has monthly expenses of \$925 for rent, \$286 for her car, \$235 for car insurance, \$200 for food, \$60 for utilities, and \$160 for gasoline. She

further claims that she sends her husband money to live in Mexico because her husband is not working, but rather, is taking care of his sister's children. Furthermore, [REDACTED] claims she cannot go to Mexico to be with her husband because her mother, a U.S. citizen, is having marital difficulties and that [REDACTED] would like to be available for her mother. [REDACTED] also states that most of her family members are in the United States and that her daughter would have a difficult time adjusting to life in Mexico, particularly because she does not speak Spanish fluently. [REDACTED] states that she would like to return to school to become a Certified Nurse Assistant and that she would not be able to do so in Mexico. *Letters from* [REDACTED], dated May 4, 2006, and December 28, 2005.

Even assuming, without deciding, that [REDACTED] would suffer extreme hardship if she moved to Mexico to be with her husband, nonetheless, she has the option of staying in the United States. After a careful review of the record, there is insufficient evidence to show that she has suffered or will suffer extreme hardship if she were to remain in the United States without her husband. The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, with respect to [REDACTED]'s financial hardship claim, there is insufficient evidence in the record to substantiate her claims. Aside from the couple's bank account statement, there are no other tax or financial documents in the record. There is no documentation in the record substantiating [REDACTED] claims regarding her expenses. Although there is a letter in the record verifying [REDACTED]'s employment as a Medical Assistant, there is no documentation regarding her wages. There is no evidence from employers verifying the applicant's past employment or wages, and no evidence documenting the extent to which he helped support the family while he was in the United States. Without more detailed information, the AAO is not in the position to attribute Ms. [REDACTED] financial difficulties to the applicant's departure. 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).

Regarding [REDACTED] physical and mental health problems, there is insufficient evidence in the record to show that her health issues rise to the level of extreme hardship. The only documentation in the record addressing [REDACTED]'s health is a letter from [REDACTED]'s employer, who is a physician, and a copy of a prescription for Xanax. The letter from [REDACTED]'s employer states:

Recently, [REDACTED] has been absent-minded at work. On further questioning, it is realized that she has been under a lot of stress from her husband's immigration case. . . . She developed palpitation and insomnia, requiring tranquilizer to help calm down for work and sleep. It is my medical opinion that [REDACTED], my patient and employee, is suffering from anxiety and emotion stress. . . .

*Letter from* [REDACTED], dated May 5, 2006. Although the input of any physician is respected and valuable, the AAO notes that the letter from [REDACTED] is written primarily from his perspective as [REDACTED]'s employer, not as her treating physician. Significantly, the letter is not based upon a medical or psychological exam; rather, the letter states that [REDACTED] medical opinion is based on his

observations of [REDACTED] absent-mindedness at work and based on his questioning of his employee. While the AAO does not doubt that [REDACTED] is suffering from depression and stress, [REDACTED] does not allege that she is currently receiving or seeking therapy, counseling, or any type of mental health services, and there no letters or statements from a counselor, therapist, or other mental health professional in the record. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical or mental health condition, or the treatment and assistance needed.

Although the AAO recognizes [REDACTED] will endure hardship by remaining in the United States without the applicant, their situation is typical to 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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)(v) 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.