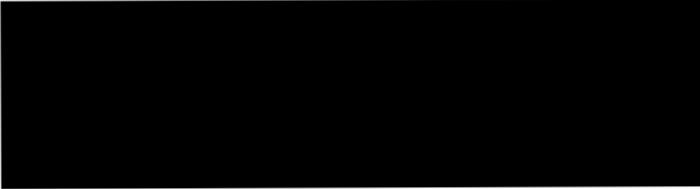


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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAR 06 2009  
CDJ 2004 779 323 (RELATES)

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)  
of the Immigration and Nationality Act (INA), 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 District Director, Mexico City, Mexico, denied the instant waiver application. 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, the spouse of a U.S. citizen, and the beneficiary of an approved Form I-130 petition filed by his wife. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife.

The district director found that the applicant had been unlawfully present in the United States from 1998 through October 2005 and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The district director also found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application.

On appeal, the applicant, through his wife, submitted additional evidence pertinent to hardship. Although the applicant does not appear to contest the district director's determination of inadmissibility, the law and evidence that led to that determination will be discussed.

Section 212(a)(9)(B)(i) of the Act provides:

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

The Form I-130, which the applicant's wife signed on June 30, 2004, states that the applicant's most recent entry into the United States was without inspection.

On a DS-230 Biographic Data form, the applicant stated that he lived in Cantua, California from March 1998 to April 2004, and in Kernan, California from April 2004 until he signed that form on October 25, 2005. Under "Type of Visa," the applicant stated "None." Asked to provide his alien identification number ("A" number), the applicant stated, "None." The applicant also stated on that form that he had been denied entry into the United States during March 1998.

On the Form I-601 waiver application, the applicant stated that he entered the United States without inspection and lived in Cantua Creek, California from 1998 to April 2004, and in Kernan, California, from April 2004 to October 2005. That application was filed in Ciudad Juarez, Mexico, which indicates that the applicant had left the United States.

The evidence in the record is sufficient to show that the applicant was illegally present in the United States from 1998 to October 2005, and that he has since left the United States. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] 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 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those

hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

In a letter, dated November 18, 2005, the applicant's wife stated that the applicant is a wonderful husband, responsible and hard-working, the provider of the family, and a wonderful father to their son.

In a letter, dated July 25, 2006, the applicant's wife stated that she has been devastated by the denial of the waiver application, and that she and her son depend upon the applicant emotionally and financially and she does not know how they will cope with the situation. Although the applicant's wife stated that she and her son are homeless, the return address on that letter is unchanged from the address previously submitted on the Form I-601 and elsewhere. The applicant's wife also stated that she is under a doctor's care because of depression and insomnia.

The letter contains a "Return to Work/School Certificate," issued by the Valley Family Health Center and dated July 24, 2006. It states that the applicant's wife was seen on July 21, 2006 for depression and insomnia and was prescribed Zoloft. The name of the person who signed that document is illegible and his or her position at that clinic, if any, is not indicated. The record contains a photocopy of a memorandum that indicates that the applicant's wife had another appointment scheduled for August 4. Those documents contain no indication of the seriousness of the applicant's wife's depression or its prognosis.

The applicant's wife's assertion that she relies on the applicant's income is insufficient to show that her hardship is any greater than the normal, predictable hardship that accompanies removal of a spouse from the United States. Similarly, the applicant's wife's assertion that she is emotionally dependent on her husband and does not know how to cope with his absence is insufficient to distinguish this case from inadmissibility cases in general. Although the record contains some evidence that the applicant's wife has seen a doctor once, received a prescription, and scheduled a second appointment, the gravity of her depression and insomnia is not demonstrated by the evidence.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence.

While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one’s spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the “*extreme hardship*” standard, hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *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); *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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.