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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:

Office: MEXICO CITY

Date: MAY 15 2009

(CDJ 2006 512 848 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)

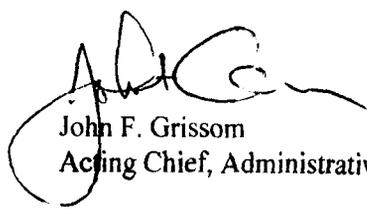
ON BEHALF OF APPLICANT:

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 Acting District Director, Mexico City, 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 naturalized 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 her husband and child in the United States.

The acting district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. *Decision of the Acting District Director, dated April 28, 2008.*

The record contains, *inter alia*: a psychological evaluation for the applicant; two psychological evaluations for the applicant's husband, [REDACTED] two letters from [REDACTED] a letter from the couple's child's physician; copies of a credit card bill, mortgage statements, and other financial documents; copies of the birth certificates of the applicant's two U.S. citizen children from her previous marriage; a copy of the birth certificate of the couple's U.S. citizen son; 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)(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.

(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 acting district director found, and the applicant does not contest, that the applicant entered the United States in 1994 without inspection and remained until July 2007. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until her departure from the United States in July 2007 with the couple's son. The applicant, therefore, accrued unlawful presence for over one year. She now seeks admission within ten years of her 2007 departure. Accordingly, she 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 herself 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's spouse has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

In this case, [REDACTED] states that he is a truck driver and is the only one working to support his family. He states he travels throughout the country and when he gets home, he needs his wife to help prepare food and clothing so that he can rest before leaving for his next job. [REDACTED] states that the applicant has two children from a previous marriage and that they have a one-year old child together. He states he does not have anyone else to care for their children. [REDACTED] states he misses his wife and kids and that life has no purpose without them. He states he now comes home to an empty house which depresses him and makes him cry. In addition, [REDACTED] contends that since his wife's departure from the United States with their son, his expenses have increased. He also states he would like to have the

couple's son in the United States so he can have "better medical attention." *Letters from* [REDACTED] dated July 6, 2007, and undated.

A psychological report in the record states that [REDACTED] came to the United States from Mexico in 1993. According to the report, [REDACTED] lived and worked in Milwaukee, Wisconsin, until April 2007 when he moved in with his brother in California in order to be closer to his wife in Mexico. The report states [REDACTED] continues paying mortgage of \$1,456 per month for his house in Milwaukee in addition to paying his brother \$400 in rent and paying for his wife and child to live in Mexico. The report states [REDACTED] is in "excellent" physical health and did not report any illnesses or injuries. However, the report indicated [REDACTED] had difficulty sleeping because he worries about the future of his family. The report indicates [REDACTED] is unwilling to move to Mexico to be with his wife because he is "a proud American . . . [and] after 13 years residing here certainly is more American than Mexican." The psychologist found that [REDACTED] has "situational anxiety related to absent wife and children and features of depression, which is within low end of moderate range," and concluded that his "depression and anxiety . . . can be easily resolved if his wife is allowed to return and join him." *Letter from* [REDACTED], dated August 1, 2007.

The applicant submitted a more recent psychological report with her appeal. This one-page report diagnoses [REDACTED] with major depressive disorder. The report states that [REDACTED] "cries almost every day when trying to fall asleep," has lost ten pounds in the past two months, feels worthless, and has had suicidal thoughts. The report states [REDACTED] is unable to join his wife in Mexico "[o]ut of personal and professional reasons." The psychologist recommends two to four months of therapy and stress reduction exercises. *Psychological Evaluation Report*, dated July 18, 2008.

After a careful review of the record, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if his wife's waiver application were denied. Significantly, although the psychological reports provide reasons [REDACTED] is unable or unwilling to return to Mexico to be with his wife, [REDACTED] himself does not discuss the possibility of moving back to Mexico to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. While [REDACTED] may be a proud American who has lived and worked in the United States since 1993, the record shows that [REDACTED] is in excellent physical health and there is no evidence that moving back to Mexico to be with his wife rises to the level of extreme hardship.

Furthermore, [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, 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).

Regarding the psychological reports for [REDACTED] although the input of any mental health professional is respected and valuable, the AAO notes that the two reports are based on a total of three interviews with [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. Moreover, the conclusions reached in the submitted evaluation do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the therapist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. In addition, regarding the psychological report for the applicant in the record, as stated above, hardship the applicant herself may experience is not a permissible consideration under the statute. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

To the extent [REDACTED] stated his expenses have increased, there is insufficient evidence in the record to show extreme financial hardship. [REDACTED] does not give any details regarding his financial situation, there are no tax documents in the record, and there is no evidence from employers verifying his employment or wages. Without more detailed information, the AAO is not in the position to conclude that the denial of the applicant's waiver application causes extreme financial hardship to Mr. [REDACTED]. 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).

Finally, although [REDACTED] would like his son to receive "better medical attention" in the United States, there is no indication his son has any medical problems whatsoever and no evidence that he cannot be adequately cared for in Mexico. *Letter from* [REDACTED] dated July 23, 2007 (stating only that the couple's son "needs consistent parenting by his mother. Hence [the applicant's] presence is in [REDACTED] best of interest [sic].").

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 she 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.