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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services



H3

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ), MEXICO Date: **MAY 19 2009**
CDJ 1996 749 219

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality 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 District Director, Mexico City, Mexico, 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 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 is the son of a lawful permanent resident of the United States, and he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his father.

The District Director found that the applicant failed to establish extreme hardship to his lawful permanent resident father, and denied the application. *Decision of the District Director*, dated June 16, 2006. On appeal, the applicant asserts that his father “needs [him] desperately,” he expresses his desire to be with his parents, and strongly objects to the separation of his family. *Form I-290B Notice of Appeal*, dated July 16, 2006. The entire record was reviewed and considered in rendering a 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 [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.

8 U.S.C. § 1182(a)(9)(B). 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 upon a showing that the bar imposes an extreme hardship to the applicant's U.S. citizen or lawfully resident spouse or parent. Hardship to the applicant himself is not a consideration in section 212(a)(9)(B)(v) waiver proceedings. 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provides a non-exhaustive list of factors it deems relevant in determining whether an alien has established extreme hardship. 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. "Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994)).

U.S. courts and the BIA have held that "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a 26-year-old native and citizen of Mexico who resided in the United States from 1998 to 2004. The applicant's father is a 63-year-old lawful permanent resident who resides in Riverside, California. As noted by the District Director, the applicant submitted a statement from his father which very briefly addressed the issue of hardship. *Decision of the District Director, supra*. The applicant's father indicated that at his age he can no longer contribute much to support the family. *Id.* He also stated that life is difficult in Mexico, and that he would like his son to qualify for a visa so that he can advance in life, have a better future, and

support the family. *Id.* On appeal, the applicant reasserts his father's need for his son, and emphasizes the importance of family unity. *Form I-290B Notice of Appeal, supra.*

The record also indicates that an individual named [REDACTED], with the same date of birth, has a criminal record involving arrests in Salt Lake City, Utah in 2002 and 2003. *See Form I-72*, dated Apr. 8, 2005. However, it does not appear that these arrests relate to the applicant because the fingerprint checks failed to disclose any prior arrests for the applicant.

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident father, as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(i) 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.