

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H4

[Redacted]

FILE:

[Redacted]

Office: SAN FRANCISCO, CA

Date: JUN 24 2005

IN RE:

[Redacted]

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:

[Redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, CA. The matter 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's mother is a U.S. citizen and he is seeking a waiver of inadmissibility in order to reside in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen parent. The application was denied accordingly. *Decision of the District Director*, dated September 23, 2003.

On appeal, counsel for the applicant asserts that the waiver denial was based on an erroneous interpretation of law and facts. *Brief in Support of Appeal*, dated October 20, 2003.

In support of these assertions, counsel submits a brief. The record also includes evidence from the initial I-601 including an affidavit by the U.S. parent; affidavits from other relatives; a psychologist's report; pictures of the applicant's family and birth certificates of the applicant's children. The entire record was reviewed and considered in rendering a 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 the present application, the record indicates that the applicant entered the United States without inspection on or about August 1989. He filed an application to adjust status on March 30, 2001 based on an approved I-130 Petition filed by his mother. He departed the United States using an advance parole document and returned to the United States on August 21, 2001. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until March 30 2001, the date he filed the I-485 application. The 10 year bar was triggered by the applicant's departure from the United States. Therefore, the applicant 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 more than one year.

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 alien himself experiences due to separation is irrelevant to 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*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau 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 lawful permanent resident or U.S. citizen family ties to 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.

An analysis under the factors of *Matter of Cervantes-Gonzalez* is appropriate in this case. The record is not clear on the presence of the qualifying relative's family ties to the United States, but there are some family ties indicated including her two U.S. citizen grandchildren, her U.S. citizen niece and her permanent resident sister. Her spouse's legal status and the applicant's brother's relationship to the applicant's mother are not mentioned in the record. The record does not indicate the qualifying relative's family ties outside of the United States, however, she was born in Mexico and comes from a family of ten children. *Psychologist's Report*, dated September 14, 2002. The record does not include evidence of the conditions in Mexico other than a few brief statements. However, the applicant's mother was born and presumably raised in Mexico. *Id.* at 2.

The record indicates that the applicant's mother is working in the United States, therefore, a negative financial impact may result if she departs the United States. However, no evidence is presented to verify this impact. Lastly, the record indicates that the applicant's mother has asthma and bronchial infections, but no medical records of these problems or documentation that she cannot receive treatment or medicine in Mexico is presented.

Counsel makes several assertions in his brief. First, counsel states that there is an undisputed claim regarding extreme hardship. *Brief in Support of Appeal*. at 2. Counsel takes the district director's references to the applicant's I-601 arguments as the view of the district director. This contention is inaccurate in that the

district director was summarizing the applicant's arguments and then determined that extreme hardship did not exist in this case. Therefore, a dispute clearly existed in regard to extreme hardship.

Second, counsel contends that character letters regarding the applicant from various relatives are essential as the applicant was wrongly classified as an aggravated felon. *Supra.* at 3. The first issue in an I-601 waiver is whether the qualifying relative will suffer extreme hardship. The value of the letters is related to the level they address this issue which is only to a small degree. Furthermore, if extreme hardship were proven, then these letters may carry some weight in the discretionary phase of the analysis.

Lastly, counsel asserts that the applicant was not convicted of an aggravated felony and this misclassification is so prejudicial as to require remand if not outright reversal of the decision. *Id.* at 3. The AAO agrees that the applicant has not committed an aggravated felony as his conviction was under a general sexual abuse statute not related to minors, however, this is not a basis for reversing a decision relating to extreme hardship.

U.S. court decisions have repeatedly 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. The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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