

Identifying data deleted to  
prevent clear, unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., NW, Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

411

FILE:

Office: LOS ANGELES, CA

Date: AUG 30 2006

IN RE:

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:

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.

A handwritten signature in cursive script that reads "James Wiemann" with "for" written below it.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California. 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 is married to a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

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 spouse. The application was denied accordingly. *Decision of the District Director, dated August 4, 2004.*

On appeal, counsel asserts that the applicant has demonstrated that his spouse would suffer extreme hardship if the applicant were removed from the United States. *Form I-290B, dated September 7, 2004.*

In support of these assertions, the record includes, but is not limited to, a letter from the applicant, dated September 2, 2004; a letter from the applicant's spouse, dated September 2, 2004; a letter from the applicant's spouse, dated May 1, 2002; Annex A, a list of family members of the applicant and his spouse; a copy of the marriage certificate, dated March 16, 2001; a copy of the applicant's spouse's U.S. birth certificate; a copy of the applicant's step-daughter's U.S. birth certificate; an employment letter for the applicant's spouse, dated March 6, 2002; earnings statements for the applicant's spouse; tax statements for the applicant and his spouse; a copy of the applicant's Mexican birth certificate; a copy of the applicant's spouse's divorce certificate, dated October 19, 2000; **Forms G-325 for the applicant and his spouse; confirmation of pregnancy letter for the applicant's spouse,** [REDACTED] dated April 2, 2002; and a Record of Sworn Statement in Administrative Proceedings. 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 in 1991 or 1992. *Record of Sworn Statement in Administrative Proceedings; Form I-485*. The applicant left the United States in 1994 due to a family emergency. *Id.* He returned to the United States (*See Form G-325A listing the applicant's dates and addresses in the United States*), and departed again in 2000. *Record of Sworn Statement in Administrative Proceedings*. The applicant re-entered without inspection in January 2000. *Form I-485; Form I-130*. On March 16, 2001, the applicant married a U.S. Citizen. *Marriage certificate, dated March 16, 2001*. On April 25, 2001 the applicant's spouse filed a Form I-130 Petition on behalf of the applicant. *Form I-130*. The Service approved this petition on March 12, 2002. *Id.* On May 10, 2001 the applicant filed an Application to Register Permanent Residence or Adjust Status. *Form I-485*. On May 21, 2002 the applicant filed an Application for Waiver of Ground of Excludability. *Form I-601*. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until January 2000, the date he departed the United States. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his January 2000 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(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 inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's spouse if the applicant is removed. If 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 Board 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 a lawful permanent resident or United States 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Mexico or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse has a U.S. citizen sister and mother who reside in the United States. *See Annex A, list of family ties.* The record does not address what family ties, if any, the applicant's spouse has in Mexico. The applicant's spouse was born in the United States. *See copy of U.S. birth certificate of the applicant's spouse.* There is nothing in the record to show that the applicant's spouse has ever resided in Mexico. Additionally, the record does not address how the applicant's spouse would be affected if she resided in Mexico. The applicant's spouse works as an office manager in the United States. *See letter of employment for the applicant's spouse, dated March 6, 2002.* There is nothing in the record to show that the applicant's spouse would be unable to work in Mexico. The AAO finds that the applicant has not demonstrated that his spouse will suffer extreme hardship if she resides in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse stated that their family's future would be affected economically and emotionally if the applicant could not reside in the United States. *Letter from the applicant's spouse, dated September 2, 2004.* Their U.S. citizen daughters completely depend upon him for moral and economic support. *Id.* The record fails to demonstrate that the applicant will be unable to contribute to his family's financial well being from a location outside of the United States. The applicant's spouse stated that their daughters are very attached to the applicant, and she could not even imagine what would happen if the applicant were to be taken away from their side. *Id.* The Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be considered in the assessment of hardship factors in the present case. 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 (9<sup>th</sup> 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 (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. *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 spouse 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 spouse 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.