

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H4

FILE: [REDACTED] Office: CIUDAD JUAREZ
(CDJ 2005 549 504 relates)

Date:

MAR 03 2009

IN RE: [REDACTED]

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:

[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.

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Ciudad Juarez, 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 children in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. *Decision of the Officer in Charge*, dated February 17, 2006.

On appeal, the applicant's husband, [REDACTED], claims he has suffered extreme hardship since his wife left the United States and requests oral argument.

The record contains, *inter alia*: a copy of the marriage license of the applicant and her husband, [REDACTED] indicating they were married on March 13, 2002; three letters from [REDACTED] a copy of [REDACTED] naturalization certificate; copies of [REDACTED] prescriptions for high cholesterol; a statement from the applicant; copies of medical bills from Mexico; copies of the couple's children's birth certificates; a copy of a home equity loan for [REDACTED] a copy of [REDACTED] Sprint bill; photos of the applicant and her family; and a copy of an approved Petition for Alien Fiance (Form I-129F). The entire record was reviewed and considered in rendering this 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 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 record indicates, and the applicant does not contest, that she entered the United States in September of 1999 without inspection and remained until October of 2003. The applicant accrued unlawful presence of four years. She now seeks admission within ten years of her 2003 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 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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Hardship the alien herself, or her children, may experience is not a permissible consideration under the statute. *Id.* Therefore, the only relevant hardship in the present case is hardship suffered by the applicant's husband, [REDACTED]. 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 has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

In this case, [REDACTED] states he has suffered extreme hardship because he is living without his wife and small children. *Letter from* [REDACTED] dated March 21, 2006. He states his mind is constantly under stress and that his physical health could be in jeopardy. *Id.* He claims he has high cholesterol for which he takes prescription medications. *Letter from* [REDACTED], dated October 27, 2005. [REDACTED] further claims he is suffering from severe financial hardship because he works two jobs in order to pay for his house in the United States and sends his wife in Mexico \$700 per month. *Id.* He further states that his older daughter, who is living in Mexico with the applicant, has a breathing problem in Mexico due to the open sewer system in the town where they are currently living.

Id. [REDACTED] states that he has to pay his daughter's medical bills in Mexico because his health insurance in the United States does not cover the expenses she incurs in Mexico, and that he had to get a home equity loan in order to pay the bills in Mexico. *Id.* In addition, [REDACTED] asserts that he cannot return to Mexico, where he was born and lived until he was eighteen years old, because there are no jobs there and the only work there is in agriculture that pays only \$50 per week. *Id.* He further states he is immersed in American culture and doesn't "fit in" in Mexico anymore. *Letter from* [REDACTED] [REDACTED] undated; *Letter from* [REDACTED], dated March 21, 2006 (stating he has lived more years in the United States than in Mexico, needs to be able to continue his career, and is unaccustomed to living in Mexico).

Even assuming, without finding, that [REDACTED] would suffer extreme hardship if he moved back to Mexico, he nonetheless has the option of staying in the United States. The AAO recognizes that [REDACTED] has endured hardship since the applicant and their children departed the United States and is sympathetic to the family's circumstances. However, their situation, if [REDACTED] 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 based on the record. 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 [REDACTED] assertion that his physical health is in jeopardy from all of the stress he has endured and his high cholesterol, there is insufficient evidence in the record to show that his health issues have risen to the level of extreme hardship. There is no letter or statement in the record from a doctor or health care professional addressing [REDACTED]'s health. Other than stating that he "[had] not felt good," *Letter from* [REDACTED] dated October 27, 2005, [REDACTED] does not elaborate or describe how his high cholesterol affects him and he does not assert that he needs any assistance for it. Without more detailed information from a treating physician, the AAO is not in the position to reach conclusions regarding the severity of a medical or mental health condition, or the treatment and assistance needed.

Similarly, there is insufficient evidence in the record to show that [REDACTED] is suffering extreme financial hardship because he has to pay for his house in the United States, as well as to support his wife and children in Mexico. Aside from a copy of a Sprint bill, copies of medical bills, and a home equity loan, there is no documentation in the record addressing either the applicant's or his wife's income or expenses. There are no tax documents in the record, no evidence from employers verifying [REDACTED] employment, and no documentation regarding his wages. Although the AAO does not doubt that [REDACTED]'s financial situation is precarious, without more detailed information, the AAO

is not in the position to attribute [REDACTED] financial difficulties to the applicant's departure. 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).

To the extent the applicant and her children may have experienced hardship, as discussed above, the hardship the alien herself or her children 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). Additionally, Mr. [REDACTED] request for oral argument is denied. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. USCIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

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.