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U.S. Citizenship
and Immigration
Services

H4

FILE:

Office: MEXICO CITY

Date: MAR 18 2009

(CDJ 2004 677 288 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:

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. 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 U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated April 10, 2006.

On appeal, the applicant's wife, [REDACTED], claims she has suffered extreme hardship since her husband left the United States.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on August 3, 2002; two letters from [REDACTED] three letters from [REDACTED]'s doctors; two copies of prescriptions for [REDACTED] copies of Ms. [REDACTED] pay stubs; a copy of [REDACTED] class schedule; 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:

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 that the applicant entered the United States in June 2001 without inspection and remained until January 2003.¹ Therefore, the applicant accrued unlawful presence for over one year. He now seeks admission within ten years of his 2003 departure. Accordingly, he 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). 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, _____ states that she will suffer extreme hardship if her husband's waiver application is denied because her health will be affected. She claims that a major issue with her health is infertility, and that she suffers from irregular menstruation and ovarian cysts. She claims that she will have to undergo in vitro fertilization in order to get pregnant and that if her husband cannot return to the United States, she will have to go to Mexico to receive treatment, where she has no health insurance or

¹ Although the applicant had previously stated he entered the United States without inspection in August 2002, based on the record evidence, the district director found that the applicant actually entered without inspection in June 2001. The applicant, represented by counsel, does not challenge this finding.

medical history. In addition, [REDACTED] contends she has been employed for five years as a dental assistant and that her goal is to become a dental hygienist, which will be a “big expense and is extremely time consuming.” She claims that she will have to change her hours from full-time to part-time and needs her husband to financially support her in order to reach this goal. She states that this field of work does not exist in Mexico and that if she moved to Mexico, she would lose the opportunity to obtain a higher education. Furthermore, [REDACTED] states she does not want to go back to Mexico, where she was born, because she has lived in the United States for the past seventeen years, no longer has family in Mexico, and the standard of living in Mexico is lower than in the United States. *Letter from [REDACTED]*, dated December 20, 2005.

Even assuming, although this has not been established, that [REDACTED] would suffer extreme hardship if she moved back to Mexico to be with her husband, nonetheless, she has the option of staying in the United States. After a careful review of the record, there is insufficient evidence to show that she has suffered or will suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States, their situation, and their desire to start a family despite their separation, is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The letters from [REDACTED] doctors in the record state that the applicant and his wife have been unsuccessful in conceiving a child and will need to undergo in vitro fertilization in order for [REDACTED] to become pregnant. *Letter from [REDACTED]* dated December 15, 2005; *Letter from [REDACTED]* dated September 24, 2004; *Letter from [REDACTED]* dated September 29, 2004. [REDACTED] does not suggest, nor do these letters state, that she has a serious medical condition for which she needs treatment or assistance. Rather, the evidence shows that if the applicant and [REDACTED] wish to conceive a baby, they will need to undergo in vitro fertilization to do so. The AAO is sympathetic to the couple’s circumstances; however, the evidence does not show that these circumstances rise to the level of extreme hardship.

Similarly, the fact that [REDACTED] would like to reach her goal of becoming a dental hygienist and needs her husband to financially support her in order to do so does not warrant a finding of extreme hardship. In any event, even if [REDACTED] decides to reduce her work schedule in order to pursue her goal, resulting in 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).

Although the AAO recognizes [REDACTED] will endure hardship by remaining in the United States, 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).

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)(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.