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



H6

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FILE:  Office: MEXICO CITY (CIUDAD JUAREZ) Date: DEC 08 2009
(CDJ 2004 744 039)

IN RE: 

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:



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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
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 resided in the United States from July 2001, when she entered the country without inspection, to August 2002, when she returned to Mexico. She was found to be inadmissible to the United States under 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 for a period of one year or more. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. She 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 return to the United States and reside with her husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated November 14, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband is suffering psychological and financial hardship since the applicant departed the United States. Specifically, counsel states that separation from the applicant is causing him to feel lonely and depressed and to drain him financially because he must support two households. *Memorandum of Law in Support of Appeal* at 2. Counsel further asserts that the applicant's husband would suffer extreme hardship if he relocated to Mexico because he has lived his whole life in the United States and has significant family ties in the United States and no family ties to Mexico. *Memorandum of Law* at 1-2. Counsel additionally asserts that the applicant's husband would suffer hardship in Mexico due to economic conditions and lack of access to adequate medical care there. *Memorandum of Law* at 2. In support of the waiver application and appeal, counsel submitted a letter from the applicant's husband, a letter from the applicant's physician stating that she is pregnant, information on conditions in Mexico, documents related to the applicant's husband employment and medical insurance, a birth certificate for the applicant's son, naturalization and birth certificates for the applicant's husband's parents and siblings, and letters concerning an inquiry on the applicant's case by Senator Richard Durbin. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (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 Secretary, 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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. 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. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-three year-old native and citizen of Mexico who resided in the United States from July 2001, when she entered without inspection, until August 2002. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of one year or more. The applicant’s husband is a thirty-seven year-old native and citizen of the United States. The applicant currently resides in Mexico and her husband resides in Chicago, Illinois.

Counsel asserts that the applicant's husband would suffer extreme hardship if he relocated to Mexico because he has lived his entire life in the United States, would be separated from his family members in the United States, and would have difficulty finding employment and would be denied access to adequate medical care. In support of these assertions counsel submitted copies of birth certificates and naturalization certificates indicating that the applicant was born in the United States and his parents and his brother and sister are all U.S. Citizens and reside in the United States. Counsel also submitted statistics on access to medical care and education in Guerrero, the state where the applicant resides, and a U.S. State Department Report on Human Rights Practices in Mexico, which states that the minimum wage in Mexico did not provide a decent standard of living and only a small fraction of workers receive the minimum wage. Counsel also submitted a letter from the applicant's husband's employer stating that he has worked there since 1991 and earns \$31.55 per hour as a laborer and truck driver, a statement from the Social Security Administration stating that his reported income ranged from \$54,000 to \$55,000 from 2003 to 2005, and evidence that he has medical insurance.

The applicant's husband has resided his entire life in the United States and his entire immediate family resided in the United States. He has steady employment with health insurance benefits and no apparent ties to Mexico. It appears that in light of his length of residence and ties to the United States and poor economic conditions in Mexico, he would suffer emotional and financial hardship if he relocated there to reside with the applicant.

The applicant's husband states that he is suffering emotional hardship due to separation from the applicant and their son and further states,

My wife, son and the baby we are expecting are my life and being without them the stress I feel is draining the life out of me. Over the last three months I have lost about 40 pounds, this is the worst feeling I have felt in my life. I have sleepless nights thinking about the kidnappings that are occurring in Mexico for money especially since people know that I am living here in the United States. *Statement of Ulises Bustos* dated December 8, 2006.

The applicant's husband states that he is suffering emotional hardship due to separation from the applicant and worries about the safety of his wife and children in Mexico. No evidence concerning his mental health or the potential psychological effects of the separation was submitted, and the evidence on the record is insufficient to establish that any emotional difficulties he is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's exclusion or removal. Although the depth of his distress caused by separation from his wife is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant's husband states that having to support two households is draining him financially and he must pay his rent, car payment, and other bills and send money to the applicant in Mexico. No documentation of the family's living expenses was submitted to support the assertion that maintaining two households is causing financial hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, there is no indication that there are any ongoing unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of separation from the applicant. Any financial impact of maintaining two households therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. See *INS v. Jong Ha Wang*, *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The evidence on the record is insufficient to establish that any emotional or financial hardship the applicant's husband is experiencing is other than the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

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. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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. 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.