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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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FILE: [REDACTED] Office: CIUDAD JUAREZ Date: DEC 08 2009  
CDJ 2004 624 182

IN RE: [REDACTED]

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

*Perry Rhew*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, [REDACTED] 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 1996, when he entered without inspection to April 2005, when he returned to Mexico. He was found to be inadmissible to the United States under 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 one year or more. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. He 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 his wife and children.

The officer in charge 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 Officer in Charge* dated February 16, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife tried to remain in Mexico with him, but she found it too difficult and separation from her family members in the United States was too painful. *See Counsel's Statement in Support of Appeal* at 2-3. Counsel further claims that the applicant's wife is suffering financial and emotional hardship as a result of separation from the applicant and is under a lot of stress trying to raise her children, two of whom have special needs, without a father figure. *Counsel's Statement in Support of Appeal* at 2. In support of the appeal counsel submitted records related to a 2004 arrest of the applicant, copies of family photographs, medical records for the applicant's stepdaughter, and a letter from the applicant's employer. The record also contains a letter from the applicant's wife. 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.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

A waiver of the bar to admission resulting from violation of 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 citizen or lawfully resident spouse or parent of the applicant. 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 twenty-eight year-old native and citizen of Mexico who resided in the United States from 1996, when he entered the country without inspection, to April 2005, when he returned to Mexico. The applicant's wife is a twenty-eight year-old native and citizen of the United States whom the applicant married on May 9, 2002. The applicant currently resides in Mexico and his wife resides in Fayetteville, Arkansas with their three children.

Counsel asserts that the applicant's wife is suffering emotional hardship because she must work full time to support her children, and further states that working and raising three children, two of whom have special needs, on her own "is a source of great stress for [REDACTED] Counsel's Statement at 2. In support of these assertions counsel submitted medical records for the applicant's stepdaughter stating that she was assessed for Attention Deficit Hyperactive Disorder (ADHD) after her mother reported that she was hyperactive and disruptive at school and had a propensity to fight with classmates. The records do not specify whether the applicant's daughter had been diagnosed with ADHD and there is no evidence that either of the applicant's daughters has a speech impediment as asserted by counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Although the effects of a significant medical or psychological condition of a relative on the qualifying relative are relevant in assessing extreme hardship, the evidence on the record is insufficient to establish that either of the applicant's daughter suffers from such a condition.

No additional evidence was submitted to support the assertions that the applicant's wife and children are suffering from emotional or psychological hardship due to separation from the applicant. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of a spouse or parent's removal or exclusion. Although the depth of their distress over being separated from the applicant 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 removal 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.

Counsel asserts that the applicant's wife is suffering financial hardship without the applicant's income and claims that although she has medical insurance, she cannot afford treatment for a "ball that has formed on the back of her head" because she cannot afford to pay a deductible. No evidence concerning the applicant's wife's income, the family's expenses, or her medical condition was submitted to support these assertions. As noted above, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof.

Counsel asserts that the applicant's wife attempted to relocate to Mexico with the applicant but suffered hardship while she was there due to separation from her relatives, her daughter's difficulties adjusting to school there, and unfavorable conditions there. No documentation concerning conditions in Mexico or evidence of the applicant's wife's family ties was submitted to support this assertion. 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)).

Based on the evidence on the record, it appears that any emotional or financial hardship the applicant's wife is experiencing appears to be 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 the 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 his 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.