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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**

HC



FILE: [REDACTED]
(CDJ 2004 757 712)

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

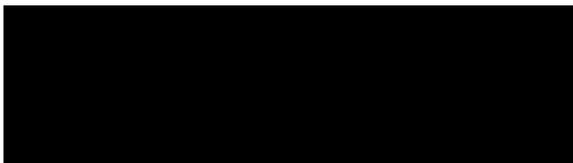
APR 05 2010

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 May 1998, when he entered the country without inspection, to March 2004, 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 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. 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 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 September 14, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife would suffer extreme hardship if she remained in the United States without the applicant or if she relocated to Mexico with him. Specifically, counsel states that the applicant's wife has resided in the United States her entire life and has significant family ties, including her parents and siblings, living in California and Arizona. *Brief in Support of Appeal* at 13-14. Counsel claims that the applicant and his wife have significant financial ties to the United States and his wife has been with the same employer for the past four years. *Brief* at 14. Counsel additionally asserts that the applicant's wife is suffering financial and emotional hardship due to being separated from the applicant and having to financially support the family on her own. *Brief* at 15. Counsel further claims that the applicant's parents, who are both lawful permanent residents, would suffer extreme hardship if he is denied admission to the United States because they have worked hard to legally immigrate to the United States and "strive to see their children here in the United States." *Brief* at 15. In support of the waiver application and appeal, counsel submitted a declaration from the applicant's wife, letters from the applicant's parents and from relatives of his wife, a copy of their daughter's birth certificate, copies of pay stubs and income tax returns, copies of bills and receipts for money transferred to the applicant, and information on conditions in Mexico. 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.

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- (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 year-old native and citizen of Mexico who resided in the United States from May 1998, when he entered the country without inspection, to March 2004, when he returned to Mexico. 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 wife is a thirty year-old native and citizen of the United States. The applicant currently resides in Mexico and his wife resides in Riverside, California with their daughter.

Counsel asserts that the applicant's wife would suffer extreme hardship if she relocated to Mexico because she has lived her entire life in the United States, would be separated from her family members in the United States, and would have difficulty finding employment and adjusting to life there. In support of these assertions counsel submitted letters and documentation indicating that the applicant's wife was born in the United States and her parents and siblings are all U.S. citizens or permanent residents of the United States. Counsel also submitted 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. Income tax returns and pay stubs submitted with the appeal indicate that the applicant's wife earned about \$37,000 in 2007 and was employed with the same company as of August 2008.

The applicant's wife has resided her entire life in the United States and her entire immediate family resides in the United States. She has steady employment with and no apparent ties to Mexico. In light of her length of residence and ties to the United States and poor economic conditions in Mexico, the emotional and financial hardship the applicant's wife would experience if she relocated there to reside with the applicant would rise to the level of extreme hardship.

Counsel asserts that the applicant's wife and their child would experience "severe and permanent psychological and other effects" if the waiver application is denied and further states that she and their daughter have experienced "grief and stress due to separation from" the applicant. *Brief in Support of Appeal* at 15. The applicant's wife states that just the thought of the applicant being barred from coming to the United States for ten years is distressing, and such a separation would split up her children and their father. *Declaration of* [REDACTED] She further states: "I believe a united family is critical to being a healthy family and this is most important." *Declaration of* [REDACTED] Letters from her parents, siblings, and other relatives state that it is very difficult for the applicant's wife, who was pregnant when the appeal was filed, to raise her daughter on her own without the applicant's emotional and financial support and it will be more difficult once she gives birth to her second child.

The applicant's wife states that she is suffering emotional hardship due to separation from the applicant and is having difficulty raising her child on her own without the applicant's support. No evidence concerning her 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 she is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's exclusion or removal. Although the depth of her distress caused by separation from her husband 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.

Counsel asserts that the applicant's wife has incurred additional childcare expenses and must meet the family's financial obligations without the applicant's income. *Brief* at 22-23. Counsel further

states that the applicant's wife sends him about \$600 per month and "they are already burdened with significant financial obligations." *Brief* at 23. In support of these assertions counsel submitted copies of bills, letters from the applicant's mother-in-law and sister-in-law stating that they are paid \$700 for rent and \$400 for child care per month respectively, and receipts for money transfers to the applicant in Mexico. No documentation of the applicant's income when he resided in the United States was submitted, and as noted above, income tax returns indicate the applicant's wife is employed and earned about \$37,000 in 2007. 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).

Counsel asserts that the applicant's parents, who are lawful permanent residents, would suffer extreme hardship if he were denied admission to the United States and have worked hard and "continue to strive to see their children join them here in the United States legally." *Brief* at 15. The applicant's mother states that it would be an extreme hardship for the applicant to be separated from his wife and child, and like any mother she wants to see her son happy and it hurts her that he is not. *Declaration of [REDACTED]* No further information was provided concerning hardship to the applicant's parents if he is denied a waiver. As stated above, 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 evidence on the record is insufficient to establish that any emotional or financial hardship the applicant's wife is experiencing or that his parents would experience 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 relatives, 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 or lawful permanent resident parents 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.