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



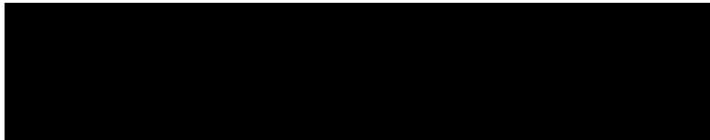
Office: MEXICO CITY (CIUDAD JUAREZ) Date: **APR 12 2010**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

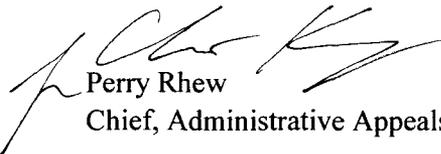
ON BEHALF OF APPLICANT:



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
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 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and children.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated September 14, 2006.

On appeal, counsel for the applicant asserts that the applicant has presented sufficient evidence to show extreme hardship to his qualifying relatives. *Statement from Counsel on Form I-290B*, dated October 6, 2006.

The record contains a brief from counsel; a list of the applicant's and his wife's relatives; statements from the applicant, the applicant's wife, the applicant's coworkers, the applicant's friend, and the applicant's sons; an account of the applicant's and his wife's household expenses in the United States; documentation regarding the applicant's and his wife's employment and compensation; documentation regarding the applicant's and his wife's mortgage and bills; documentation regarding the applicant's wife's and son's receipt of medical care in the United States; copies of birth certificates for the applicant's children; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's marriage certificate, and; documentation regarding the applicant's unlawful presence in the United States. The applicant further provided documents in a foreign language. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. With the exception of the untranslated documents, the entire record was reviewed and considered in rendering this decision.

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.

The record reflects that the applicant entered the United States without inspection in or about 1980. He remained until or about October 2005. Accordingly, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until he departed in October 2005, totaling over eight years. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

On appeal, the applicant's wife states that she and her household will endure hardship if the present waiver application is denied. *Statement from the Applicant's Wife*, dated November 10, 2006. She explains that she has resided in the United States since 1982, when she was 17 years old. *Id.* at 1. She notes that she and the applicant have two sons, ages 16 and 14 (now 20 and 17.) *Id.* The

applicant's wife asserts that should the waiver application be denied she will lose their family home and have to relocate to a small apartment, or her family will live in poverty in Mexico. *Id.* at 2. She notes that she and the applicant do not have much education, thus they both work in labor-oriented jobs, she as a truck driver and he as a restaurant chef. *Id.* at 2-3. She provides that she and the applicant would face difficult economic circumstances in Mexico. *Id.* at 3.

The applicant's wife states that her children require her and the applicant's economic support for several more years, and that their futures may be destroyed without the applicant's assistance. *Id.* She explains that she endures daily stress regarding the welfare of her children. *Id.*

The applicant's wife states that her only close relatives are her brother and sister in the United States, and that she has no close relatives in Mexico who could assist her and her children. *Id.* at 3-4. She provides that Mexico is foreign to her and the applicant, and that they would be unable to adjust to life there. *Id.* at 4.

The applicant states that he came to the United States in December 1980 and he has worked with the same company since 1984. *Statement from the Applicant*, undated. He expresses that he is experiencing significant emotional hardship due to being separated from his wife and children. *Id.* at 3. He provides that he has always had a good relationship with his wife and that they understand each other. *Id.*

The applicant provides numerous letters from his coworkers and a friend who all attest to his strong work ethic and good character.

The applicant's sons state that the applicant supports them emotionally, and that the applicant contributes substantially to their household including preparing food, assisting with parenting tasks and transportation, and providing economic support. *Statements from the Applicant's Sons*, dated November 14, 2005.

The applicant submits a letter from his wife's employer who confirms that she has worked as a truck driver since February 7, 2005. *Letter from the Applicant's Wife's Employer*, dated October 2, 2006.

Counsel asserts that the applicant has presented sufficient evidence to show extreme hardship to his qualifying relatives. *Brief from Counsel*, dated November 12, 2006. Counsel provides that the statements from the applicant's wife and sons show that the emotional and financial impact of family separation will be severe. *Id.* at 2. Counsel asserts that the greatest element of hardship to the applicant's wife would be her need to support herself and her children without the applicant's assistance. *Id.*

Counsel states that the applicant and his wife would be reduced to near-poverty should they relocate to Mexico due to their lack of education. *Id.* at 3. Counsel contends that the applicant's children would be unable to attend school in Mexico until they obtained proper visa documentation, which would impair their future employment opportunities. *Id.*

Counsel states that the applicant's wife and children will be permanently separated from the applicant if the present waiver application is denied and they remain in the United States, with only occasional visits to Mexico. *Id.*

Counsel contends that the elements of hardship to the applicant's family must be considered in aggregate. *Id.* at 2. Counsel asserts that the district director cited *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), and relied on dated authority. *Id.* at 1, 4.

Upon review, the applicant has not established that a qualifying relative will suffer extreme hardship if he is prohibited from residing in the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant has not shown that his wife will suffer extreme hardship should she remain in the United States without him.

The applicant presents documentation regarding his wife's economic circumstances to show that she will endure financial difficulty should she support her household in the United States without his assistance. The applicant provides a budget for his and his wife's household in the United States, with estimated monthly expenses totaling \$4,250. However, the applicant has not provided documentation to support all of the charges listed.

For example, the applicant claims that his household pays \$1,500 per month in mortgage expenses, yet the provided schedule of mortgage fees indicates that he and his wife must pay \$967.90 per month for the period between August 1, 2009 and August 1, 2010, which includes the present time. A more recent mortgage bill notes that the applicant may pay an amount ranging from \$726.10 to \$2,126.44, which suggests that the applicant's and his wife's ownership of their home will not be jeopardized should his wife pay the minimum amount of \$726.10. The applicant represents that his household incurs \$225 per month in fees for water and trash collection, however the applicant submits a monthly bill that indicates a charge of \$39.14 for these services. The applicant reports \$345 in monthly telephone charges, yet the telephone bills indicate combined monthly charges of approximately \$250. The applicant indicates that his family pays \$400 per month for credit cards, yet the provided credit card statements do not represent monthly expenses of this amount, rather they show approximately \$400 in outstanding balances with required monthly payments of approximately \$40. The applicant has not provided documentation to support that his family must pay \$50 per month for "hospital" or \$250 per month for gasoline.

The applicant indicates that his wife earns \$1,800 per month. He provides pay stubs for his wife that report that she earned net weekly amounts of \$541.51, \$572.12, \$490.60, \$663.07, \$667.34, 494.97, \$482.66, and \$603.29 in the covered weeks in 2006. These amounts average \$564.45. Based on a 52 week year, the record supports that the applicant's wife earned an average net pay of \$2,445.95 per month in 2006, significantly more than \$1,800 per month income as claimed by the applicant in the submitted budget.

Accordingly, the AAO is unable to rely on the budget to assess the financial circumstances the applicant's wife would face should she remain in the United States without the applicant. While the AAO acknowledges that supporting a household with one adult and two children is often

challenging, the applicant has not shown that his wife would be unable to meet her economic needs without his assistance.

The applicant expresses that he and his wife share a close relationship, thus they will endure emotional hardship should they reside apart. The separation of spouses often results in significant psychological hardship. Yet, the applicant has not distinguished his wife's emotional difficulty from that which is commonly expected when spouses reside apart due to inadmissibility. Federal court and administrative decisions have 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, *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. *Hassan v. INS*, *supra*, held further that the 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.

It is noted that counsel asserts that the applicant's wife will be permanently separated from the applicant should the waiver application be denied and she remain in the United States. However, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for 10 years from the date of his last departure. As he last departed in October 2005, he will no longer be inadmissible under section 212(a)(9)(B)(i)(II) of the Act as of October 2015. While it is understood that the emotional hardship of approximately five more years of family separation is substantial, the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is not permanent.

The record contains references to hardships experienced by the applicant's sons. Direct hardship to an applicant's children is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results when an applicant must reside abroad due to a prior violation of U.S. immigration law. The AAO recognizes that the applicant's sons face significant emotional hardship due to being separated from him. Yet, the applicant has not established that his sons are suffering consequences that can be distinguished from those ordinarily experienced. The applicant has not shown that his sons' emotional hardship is elevating his wife's challenges to an extreme level.

All elements of hardship to the applicant's wife, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not established that his wife will experience extreme hardship should she remain separated from him.

The record shows that the applicant's wife will endure significant hardship should she relocate to Mexico. She has resided in the United States for a long duration, since 1982 when she was 17 years old. Now relocating to another country would involve emotional challenges due to separation from her family and community in the United States, as well as adjustment to residing in a different culture and economic climate. The applicant's wife has consistent employment in the United States, and she would endure financial challenges should she relinquish her position and fund a move to Mexico. As the applicant and his wife own a home in the United States, they would face challenges renting or selling the property should they both reside abroad. The AAO acknowledges that the applicant's wife would endure additional emotional difficulty due to sharing in her sons' temporary loss of educational and cultural opportunities in the United States. However, these challenges are commonly faced when an individual resides abroad due to the inadmissibility of a spouse. The applicant has not distinguished his wife's challenges from those commonly experienced by individuals who join a spouse abroad, thus he has not shown that his wife will face extreme hardship should she join him in Mexico for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Counsel asserts that the district director cited *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), and relied on dated authority. The AAO agrees that *Matter of Tin*, I&N Dec. 371 (Reg. Comm. 1973), is not relevant to the present matter. The district director's reference to this case will be withdrawn. However, the district director's error was harmless, as the AAO has reviewed this case *de novo*.

Based on the foregoing, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(a)(9)(B)(v) of the Act. 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 regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.