

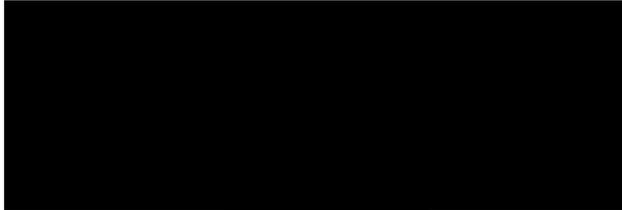
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H6

FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: APR 21 2010

IN RE: [Redacted]

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:

SELF-REPRESENTED

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 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 and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated September 14, 2007.

The record contains, *inter alia*: a statement from the applicant's wife, [REDACTED] an Order To Go To Small Claims Court; photographs of the applicant and his family; a letter from [REDACTED] college; a car accident report; letters of support; copies of the couple's son's medical records; and 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:

(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 district director found, and the applicant does not contest, that he entered the United States without inspection in January 2000 and remained until October 2006. The applicant accrued unlawful presence of over six years. He now seeks admission within ten years of his 2006 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 one year or more.

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). An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) 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.

In this case, the applicant's wife, [REDACTED] states that she has been in a very severe state of depression since her husband departed the United States. According to [REDACTED], she has been so depressed that she has "sought therapy a fe[w] months ago[, but is] no longer receiving therapy." She contends she has considered suicide and that she has been unable to continue with therapy because of her financial situation. In addition, [REDACTED] states that her son, [REDACTED], has gone to the emergency room more than once for severe constipation and abdominal pain. She claims that [REDACTED] has problems sleeping and that every time he sees his father's photograph, he starts crying. [REDACTED] contends [REDACTED] doctor states that his emotional problems are causing his physical problems and that the problems will not go away until they are able to overcome the family's separation. Furthermore, [REDACTED] states that she was enrolled in a community college for one semester to become an administrative assistant, but that she had to leave school after her husband departed the country. She states she works 56 hours per week in

order to support her family. She states she was evicted from her house and sold the furniture in order to cover their basic needs. [REDACTED] contends she had to move into her father's house and that she has been sued by a financial company because she defaulted on a \$2,500 loan. According to [REDACTED], her financial problems have caused her such emotional problems that she got involved in a car accident in which she totaled her car. [REDACTED] claims she no longer has a car and has to rely on friends and relatives to take her places. [REDACTED] further contends her parents have decided to sell their home because of economic problems and that she will soon not have a place to live. *Notice of Appeal*, dated October 11, 2007.

A letter from the applicant's relative states that [REDACTED] has gone through many tragic events this past year. The letter contends [REDACTED] was in a car accident which totaled her car, works longer hours in order to pay her bills, and has moved back in with her parents. According to this relative, the applicant's two sons miss and love their father very much. *Letter from [REDACTED]* dated October 7, 2007.

A letter from [REDACTED] supervisor states that she has witnessed [REDACTED] depression due to her husband's immigration status. According to the supervisor, [REDACTED] has to work six or seven days per week in order to support her two children and herself. The letter states that [REDACTED] is a hard worker, but that she "breaks down because of her emotions and the thoughts of not being able to be with her husband." In addition, [REDACTED] has sometimes had to go home to babysit because she does not have any other help. *Letter from [REDACTED]* undated.

Copies of [REDACTED] medical record indicate that he was seen in the emergency room on March 19 and 20, 2007, for abdominal pain. The record indicates he was again seen in the emergency room on March 23, 2007, for constipation and abdominal pain. According to the medical records, [REDACTED] indicated that [REDACTED] symptoms began one week ago and that it was his third doctor's visit. *Medical Records from [REDACTED]*

A letter from the College of the Sequoias states that [REDACTED] was enrolled as a part-time student in the fall of 2006. *Letter from [REDACTED]* dated October 10, 2007. In addition, a police report in the record indicates [REDACTED] car struck a concrete abutment on April 13, 2007, after she tried to avoid running over a cat. *Traffic Collision Report*, dated April 18, 2007. She was seen in the emergency room following the accident and was found to have a cervical strain. Furthermore, the record contains a claim from American General Finance Company ordering [REDACTED] to appear in Small Claims Court for defaulting on a \$2,500 loan. *Plaintiff's Claim and Order To Go To Small Claims Court*, dated August 21, 2007.

After a careful review of the record, there is insufficient evidence to show that the applicant's wife has suffered or will suffer extreme hardship if her husband's waiver application were denied.

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the country and is sympathetic to the family's circumstances. However, [REDACTED] does not discuss the possibility of moving to Mexico to avoid the hardship of separation and she does not address whether such a move

would represent a hardship to her. If [REDACTED] decides to remain in the United States, their situation 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. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, 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).

Regarding [REDACTED] depression, although her supervisor contends [REDACTED] is depressed, there is no documentation in the record showing that [REDACTED] hardship is beyond what would normally be expected. There is, for example, no letter from any health care professional diagnosing [REDACTED] with depression and discussing therapy or other treatment. Moreover, [REDACTED] contends her depression is related to her separation from her husband, but does not comment on whether her depression might lessen if she relocated to Mexico to be with him.

With respect to [REDACTED] medical problems, although copies of [REDACTED] medical records are contained in the record, there is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of [REDACTED]'s constipation and abdominal pain. There is no evidence [REDACTED] doctor attributes his medical issues with his father's departure from the United States, as [REDACTED] contends. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed

Regarding the financial hardship claim, aside from copies of insurance statements related to [REDACTED] medical treatment and an order directing [REDACTED] to appear in Small Claims Court, the applicant has not submitted any financial or tax documents to support his claim. There is no evidence addressing the applicant's wages when he lived in the United States and, therefore, no evidence addressing the extent to which he helped to financially support the family. Although the AAO does not doubt that [REDACTED]'s financial situation is precarious, without more detailed information, the AAO is not in the position to attribute her financial difficulties to the applicant's departure. In any event, even assuming some economic hardship, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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.