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



**U.S. Citizenship
and Immigration
Services**

146

FILE: [REDACTED] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: **APR 23 2010**
CDJ 2005 832 275

IN RE: [REDACTED]

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

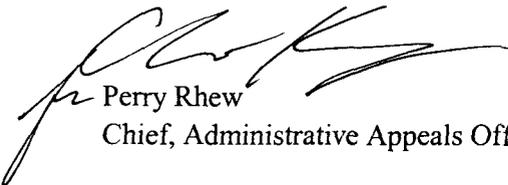
ON BEHALF OF APPLICANT:

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, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 24-year-old 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 in the United States for more than one year. The applicant is married to a citizen of the United States, and he seeks a waiver of inadmissibility under 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 director found that the applicant failed to establish extreme hardship to his spouse, and denied the application accordingly. *Decision of the Director*, dated Jan. 26, 2007. On appeal, the applicant's wife contends that the denial of the waiver imposes extreme hardship on her and her children. *See Form I-290B, Notice of Appeal*, dated Feb. 23, 2007.

The record contains, among other things, several letters from the applicant's wife; a letter from the applicant's potential employer in the United States; and two letters from [REDACTED] regarding the applicant's son [REDACTED]. The entire record was reviewed and considered in rendering this decision on appeal.

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 [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 applicant claims that he entered the United States without being inspected and admitted or paroled in or around May, 2001. The applicant departed the United States in February, 2006. The applicant's unlawful presence for more than one year and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).¹

In order to obtain a section 212(a)(9)(B)(v) waiver for unlawful presence, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family 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 in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

¹ The director erred in characterizing the ground of inadmissibility in section 212(a)(9)(B)(i)(II) of the Act as a "permanent bar to admission." *See Decision of the Director, supra* at 3. Rather, departure after unlawful presence of one year or more triggers a ten-year bar to admission. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(II).

Additionally,

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *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 mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.²

The record reflects that the applicant’s spouse, [REDACTED] is a 22-year-old native of Mexico and citizen of the United States. The applicant and her husband have been married for five years, and they have two U.S. citizen sons. The applicant’s spouse asserts that she is suffering extreme emotional and financial hardships as a result of the denial of the waiver.

Regarding the emotional hardship of separation, the applicant’s spouse states that she needs the applicant’s moral and financial support, and that her children need his presence and love. *See Letter from [REDACTED]*, dated Feb. 21, 2007. [REDACTED] notes that her youngest son was hospitalized for four days shortly after his birth in 2007, and indicates that she did not feel comfortable leaving him with a babysitter at that time because of his health and his young age. *Id.*; *see also Letter from [REDACTED]*, dated Feb. 20, 2007 (stating that [REDACTED] was hospitalized for acute febrile illness and treated with antibiotic therapy).

Regarding the financial hardship of separation, [REDACTED] states that she does not have anyone else to help them economically, and that the applicant’s absence has caused a very bad financial

² The director erred in citing to *Matter of Tin*, 14 I&N Dec. 371 (Reg. Commr. 1973) and *Matter of Lee*, 17 I&N Dec. 275 (Commr. 1978), because these decisions discuss the factors relevant to consent to reapply for admission after deportation from the United States, which are not applicable to this case. Because the AAO reviews these proceedings de novo, 5 U.S.C. § 557(b), and dismisses the appeal, this error is harmless.

situation. *See Letter from* [REDACTED]. Although the applicant did not submit any information regarding the couple's income and expenses, the record reflects that the applicant was self-employed in the United States as a handyman. *See Form G-325A, Biographic Information.* [REDACTED] also has been employed, but did not work during her maternity leave. *See Letter from* [REDACTED] *see also Letter from* [REDACTED]. Mrs. [REDACTED] claims that she cannot afford to visit the applicant in Mexico. *See Letter from* [REDACTED].

Although the record shows that separation from the applicant has caused emotional and financial hardships to the applicant's wife, the evidence in this record is not sufficient to demonstrate that the challenges encountered by [REDACTED], considered cumulatively, meet the extreme hardship standard. First, while the emotional hardship of separation is apparent from [REDACTED] letters, the applicant did not provide medical records, detailed testimony, or other evidence to show that the psychological hardships she faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Second, given the lack of information in the record regarding the family's income and expenses, the AAO cannot conclude that family separation has caused extreme financial hardship to [REDACTED]. Further, a showing of economic detriment generally is not sufficient to warrant a finding of extreme hardship. *See Hassan*, 927 F.2d at 468. Finally, the hardships faced by the applicant's children as a result of family separation are not calculated in the extreme hardship analysis, except to the extent that these hardships impact [REDACTED]. Here, [REDACTED] states that her sons need their father, and she expressed concern regarding her youngest son's health. However, [REDACTED] stated that [REDACTED] and her infant son were doing well, and that [REDACTED] planned to return to work, which [REDACTED] recommended. Accordingly, the evidence in the record does not indicate that the impact of [REDACTED] concerns regarding her children rises to the level of extreme hardship.

Regarding relocation, [REDACTED] contends that her children need to be in the United States to attend school. *See Letter from* [REDACTED] dated Mar. 7, 2006. She also claims that her children would not be able to adjust to life in Mexico because of the differences. *Id.* Additionally, [REDACTED] states that her husband has a job offer waiting for him in the United States. *See Letter from* [REDACTED] dated Feb. 21, 2007; *see also Letter from* [REDACTED].

Although it appears that relocation to Mexico could cause challenges for [REDACTED], the evidence in this record does not show that relocation would cause her extreme hardship. First, given the lack of information regarding [REDACTED] income and expenses, the AAO cannot conclude that relocation would cause extreme financial hardship. Second, the record does not indicate whether [REDACTED] has any ties to U.S. citizen or lawful permanent resident family members in the United States which would be impacted by relocation. Third, the record is silent regarding whether [REDACTED] has family ties in Mexico. Fourth, there is no evidence that [REDACTED] has any significant health conditions that would be harmed by relocation to Mexico. Fifth, any educational or adjustment difficulties that would be encountered by the applicant's children are not calculated in the extreme hardship analysis, except to the extent that these difficulties impact [REDACTED]. Here, the information in the record does not indicate that any adverse impact on the children would render [REDACTED] hardship extreme. Accordingly, the record does not show that relocation to Mexico would cause extreme hardship to [REDACTED]. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at

565-66 (recognizing importance of the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate).

In sum, although the applicant's spouse claims hardships based on family separation and relocation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed. This dismissal is without prejudice to the filing of a new application for a waiver of inadmissibility should additional hardships arise.

ORDER: The appeal is dismissed.