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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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H6

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)

Date: APR 26 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, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:
[REDACTED]

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 1994, when he entered without inspection, until June 2006, 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 in the United States for a period of one year or more. The applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Fiancé(e). 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.

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 May 29, 2007.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) abused its discretion and failed to completely evaluate the facts and apply the law in denying the waiver application and failed to provide a rational explanation for the decision. *See Brief in Support of Appeal* at 2. Counsel further contends that USCIS erred in failing to issue a written request for certified dispositions for the applicant's arrests in California and as a result the applicant did not receive a opportunity for a review of his case based on these records. *Brief* at 3-4. Counsel additionally asserts that USCIS erred in citing the incorrect waiver provision under section 212(h) of the Act in the decision, indicating a "less than complete and individualized evaluation" of the case, though the correct extreme hardship standard was later articulated in the decision. *Brief* at 5. In support of the waiver application, the applicant submitted a statement from the applicant's wife, medical records for the applicant's wife, copies of bills and other financial documents, and documentation related to the home owned by the applicant and his 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.

As noted by counsel, the record does not contain court dispositions for the applicant's two arrests, and counsel did not submit these documents with the appeal or request additional time to submit them. It is therefore not clear whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, but 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, and must seek a waiver under section 212(a)(9)(b)(v) of the Act.

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-six year-old native and citizen of Mexico who resided in the United States from 1994, when he entered without inspection, until June

2006, when he returned to Mexico. He is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from April 1, 1997, the date section 212(a)(9)(B) entered into effect, until June 2006. The applicant's wife is a twenty-nine year-old native and citizen of the United States. She resides in Plainfield, Illinois and the applicant currently resides in Mexico.

The applicant's wife states that she has bills to pay, including a mortgage payment, and the applicant pays for her studies at Northwestern Business College. *See Undated Letter from [REDACTED]* In support of these assertions the applicant submitted copies of bank statements and utility bills and documentation related to the purchase of their home in 2005. The record does not contain copies of income tax returns and it is not clear whether his wife is employed or what at the applicant's income was when he resided in the United States. There is no indication that there are any unusual circumstances that would prevent the applicant's wife from working and supporting herself, and the evidence on the record is insufficient to support the assertion that she is suffering financial hardship as a result of separation from the applicant. Based on the record, the financial impact of loss of the applicant's income 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).

The applicant's wife further states that she suffers from medical conditions including Psoriatic Arthritis that require weekly injections, and she needs the applicant to live with her and help her care for herself. *See Undated Letter from [REDACTED]*. She further states that she had to quit her job because of her medical condition and did not have insurance, and believes that the applicant will be able to find employment with health insurance benefits if he is permitted to return to the United States. She additionally states that she is having difficulty conceiving a child and is getting medical help to discover what is causing her infertility. In support of these assertions, the applicant's wife submitted copies of medical records, including handwritten physicians' notes, many of which are illegible or otherwise unintelligible, and a copy of an information sheet for the medication Enbrel. The record does not contain any more specific information about the applicant's wife's medical condition, such as a detailed letter from her doctor explaining in plain language the nature and severity of her medical condition and any treatment and family assistance needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

Based on the record, it appears that any financial, physical, or emotional hardship the applicant's wife would experience if he is denied admission and she remains in the United States would 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 (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). No claim was made that the

applicant's wife would suffer extreme hardship if she relocated to Mexico with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's wife would suffer extreme hardship if she moved to Mexico.

In this case, the record does not contain sufficient evidence to show that any 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 her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for this relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion or whether the applicant requires or qualifies for a waiver under section 212(h) 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.