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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

#5.

#6

[redacted]

FILE: [redacted] Office: MEXICO CITY Date: AUG 05 2010
(CDJ 2005 527 339)

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting 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 April 1998, when he entered without inspection, to December 2003, 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 and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for having sought to procure admission to the United States through fraud or misrepresentation of a material fact. 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.

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 Acting District Director* dated February 25, 2008.

On appeal, counsel for the applicant asserts that the applicant's wife is suffering emotional and financial hardship as a result of separation from the applicant. *See Counsel's Statement Concerning Additional Evidence of Extreme Hardship.* Specifically, counsel states that the applicant's wife and her U.S. Citizen son with whom she resides do not earn enough money to pay the family's expenses without the applicant's income. *See Counsel's Statement* at 2-3. Counsel further states that the applicant's wife suffers from diabetes and is under the care of a doctor in Mexico because she cannot afford medical care in the United States. *Counsel's Statement* at 2. Counsel further claims that the applicant's wife has been unable to obtain necessary treatment in Mexico because she cannot afford to miss work and travel there. *Counsel's Statement* at 2. Counsel additionally asserts that the applicant's wife cannot return to Mexico to reside with the applicant because she must support their minor daughter, who wishes to attend a university after completing high school, and must provide financial support to her father, who resides in Mexico and is in poor health. *Counsel's Statement* at 3. In support of the appeal, counsel submitted letters from the applicant's wife and daughter, copies of prescriptions for the applicant's wife and father-in-law, a letter from the applicant's wife's physician, copies of wage statements for the applicant's wife and son, copies of bills, a copy of the applicant's daughter's report card, and a copy of medical bills for the applicant's prospective daughter-in-law. 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.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

(1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Sections 212(a)(9)(B)(v) and 212(i) of the Act provide 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 sixty year-old native and citizen of Mexico who resided in the United States from April 1998, when he entered without inspection, to December 2003, 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 is also inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States on October 28, 1973 by falsely claiming to be a U.S. Citizen. The applicant's wife is a forty-six year-old native of Mexico and citizen of the United States. The applicant currently resides in Mexico and his wife resides in Madisonville, Texas.

Counsel asserts that the applicant's wife is suffering financial hardship due to loss of the applicant's income and does not earn sufficient income to support the family. In support of this assertion counsel submitted pay stubs for the applicant's wife and for his adult son, who both work for a mushroom factory, and copies of bills and receipts for rent and groceries. The applicant's wife states that she and her son work in a mushroom factory and barely get by with what they earn, which prevents her from visiting a doctor in the United States. *Letter from* [redacted] dated January 4, 2010. She further states that the applicant worked for several years in a school in Chicago and it would be a lot easier to pay the bills with his income. *Letter from* [redacted] Counsel submitted pay stubs for the applicant's wife and son dated November 2009 to January 2010 as well as receipts for rent payments, groceries, and other expenses. No income tax returns or W-2 forms were submitted to document their total income and no evidence of the applicant's income when he resided in the United States was submitted. Counsel further asserts that the applicant's wife will be responsible for the care and upbringing of the child of his son's girlfriend once the child is born, but no evidence was submitted to support the assertion that the child's mother does not have medical insurance or other relatives to provide her with financial support. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm.

1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)). Based on the evidence on the record, any financial impact resulting from the 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).

Counsel for the applicant states that the applicant's wife is suffering from diabetes and cannot afford treatment for her condition. The applicant's wife states that she visits a doctor in Mexico, but she did not return there for treatment in December as he recommended because she could not afford to miss work. *Letter from* [redacted] A letter from the applicant's wife's doctor states that she suffers from Diabetes Mellitus Type 2 complicated by a urinary tract infection, but provides no further information about her condition. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant is assessing extreme hardship. Without further detail about the nature and prognosis of the applicant's wife's condition, however, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or any treatment and assistance needed.

The applicant's wife states that she and her daughter are suffering extreme hardship due to separation from the applicant, but the record is insufficient to establish that any emotional hardship she might be experiencing is 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.

The evidence on the record is insufficient to establish that any emotional or financial hardship the applicant's wife would experience if the applicant is denied admission to the United States 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). No claim was made that the applicant's wife would suffer extreme hardship if she relocated to Mexico. The AAO can therefore not make a determination of whether she would suffer extreme hardship if she relocated to Mexico with the applicant.

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 as required under sections 212(i) and 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 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.