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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



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**JAN 08 2010**

FILE:  Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

IN RE: 

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)

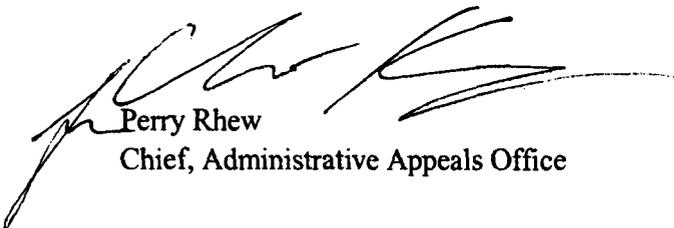
ON BEHALF OF APPLICANT:



**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 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 U.S. citizen wife 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 February 16, 2007.

The record contains, *inter alia*: two letters and an affidavit from the applicant's wife, Ms. [REDACTED], a psychological report for Ms. [REDACTED]; numerous letters of support; a copy of Ms. [REDACTED] pay stub; letters from the applicant's and Ms. [REDACTED] employers; a bank account statement; copies of receipts and bills from the couple's car insurance company, the telephone company, and DISH television; and a copy of 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:

(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.

In this case, the district director found, and counsel does not contest, that the applicant entered the United States without inspection in 1996 and remained until April 2005. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in April 2005. The applicant accrued unlawful presence of eight years. He now seeks admission within ten years of his 2005 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). 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 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, Ms. [REDACTED], states that she is an only child and has no other living relatives. Ms. [REDACTED] states that she and her husband are extremely close and that that she is dependent on him for comfort and support. In addition, Ms. [REDACTED] states she would experience extreme financial hardship if her husband's waiver application were denied because he was the main financial supporter of the family and she currently earns approximately \$200 per week, half of her husband's "potential" income. She states that even if she worked full-time, she would not be able to manage without her husband's financial support. Ms. [REDACTED] contends she has a farm on which she raises livestock and Arabian show horses. She contends her husband helped her in taking care of the livestock and that continuing to run the farm may be impossible if her husband is not allowed lawful permanent resident status. Furthermore, Ms. [REDACTED] claims that in January 2007, she experienced "a blood pressure related health problem that landed [her] in the hospital." She states she is currently taking medication to treat this problem, but that she fears she might have more problems in the future. Ms. [REDACTED] states she needs her husband with her in case any further health problems arise. Ms. [REDACTED] claims that if she moved to Mexico to be with her husband, she would lose everything in the United States, including her home,

farm, and horses. *Affidavit of Hardship from* [REDACTED], dated March 23, 2007; *Letters from* [REDACTED], dated April 8, 2006, and July 3, 2005.

A psychological report in the record states that Ms. [REDACTED] was seen for a psychological assessment on March 21, 2007, after being referred by her attorney. According to the report, Ms. [REDACTED] scored in the severe range for anxiety and in the moderate range for depression. She reported "anxiety, depression, a history of abuse, nervousness, poor concentration, distractibility, confusion, emptiness, low energy, fear, financial problems, grief, headaches, health problems, inferiority, loneliness, panic, pessimism, low self esteem, sleep disturbance, stress, and isolation." The psychologist concluded Ms. [REDACTED] is suffering from an adjustment disorder with anxiety and depression, and that her condition would likely worsen if her husband is denied U.S. residency. *Confidential Psychological Report*, dated March 22, 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 Ms. [REDACTED] is an only child whose parents have passed away and is sympathetic to her circumstances. However, if Ms. [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. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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).

With respect to Ms. [REDACTED] blood pressure related health problem, there is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of Ms. [REDACTED] purported blood pressure problems. Ms. [REDACTED] states only that she is currently taking a medication to treat the problem and that she is fearful of problems in the future. She does not suggest her blood pressure affects her daily life, if at all, and she does not contend she requires any assistance because of it. 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 psychological report, although the input of any mental health professional is respected and valuable, the AAO notes that the report is based on a single interview the psychologist conducted with Ms. [REDACTED] on March 21, 2007. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby diminishing the evaluation's value to a determination of extreme hardship.

With respect to the financial hardship claim, aside from copies of bills and/or receipts from the telephone company, DISH television, and a car insurance company, the applicant did not sufficiently address the couple's regular monthly expenses, such as rent or mortgage. In addition, although there is a letter from the applicant's previous employer, *Letter from R.C. Caston*, dated July 13, 2005, the letter does not address the applicant's wages. As such, the applicant did not submit evidence addressing to what extent he helped to support the family while he was in the country, such as tax or financial documents or other documentation regarding his wages. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In any event, even assuming some economic difficulty, the mere showing of economic harm to qualifying family members is insufficient to warrant a finding of extreme hardship. *See 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).

In addition, the record does not show Ms. [REDACTED] will suffer extreme hardship if she were to move to Mexico to avoid the hardship of separation. Ms. [REDACTED]'s claim that she would lose her home, farm, and horses does not rise to the level of extreme hardship. Ms. [REDACTED] does not claim that she has any physical or mental health issues that would make her transition to living in Mexico any more difficult than would normally be expected. To the extent she contends she has problems with her blood pressure, Ms. [REDACTED] does not claim she cannot receive adequate treatment in Mexico. In addition, Ms. [REDACTED] does not contend she does not speak Spanish, nor does she contend she cannot find employment in Mexico.

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.