

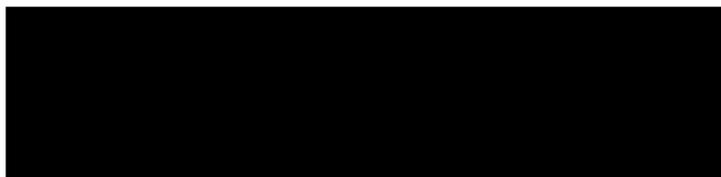
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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

NO DUPLICATE



H/c
H/b

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **JAN 22 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
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 January 2003, when she entered without inspection, until December 2005, when she returned to Mexico. She 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 is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. She 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 her husband.

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 December 11, 2006.

On appeal, counsel for the applicant asserts U.S. Citizenship and Immigration Services (USCIS) failed to take into account that separation from a loved one that affects one's children is extreme hardship. *See Notice of Appeal to the AAO (Form I-290B)*. On appeal counsel requested 30 days in order to submit a brief and/or additional evidence. As of this date, almost three years later, no additional statement or evidence has been submitted. The record is considered complete. In support of the wavier application, the applicant submitted a letter from her husband. 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.

The record contains several references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

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 twenty-five year-old native and citizen of Mexico who resided in the United States from January 2003, when she entered without inspection, until December 2005, when she returned to Mexico. The applicant married her husband, a thirty-four year-old native and citizen of the United States, on June 24, 2003. The applicant currently resides in Mexico and her husband resides in Roma, Texas.

Counsel asserts that the applicant's husband is suffering emotional hardship due to separation from the applicant the effects of the separation on his children. The applicant's husband states that the applicant is a very supporting and understanding wife who and is the main caretaker for his children while he works as a truck driver. *Declaration of Juan Adrian Garza* dated May 7, 2007. He states that she has

been a blessing to him and their children and further states, "I don't even want to think of all the suffering, pain and anguish, my children and I would go through, if she does not receive her waiver." *Declaration of Juan Adrian Garza*. No evidence concerning the applicant's husband's mental health or the psychological effects of their separation was submitted, and the record does not establish that any emotional difficulties the applicant's husband would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his distress caused by being separated from his wife and child 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 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 applicant's husband states that he can make a good living in the United States working as a truck driver with the applicant working as a homemaker. *Declaration of [REDACTED]*. No further evidence was submitted concerning the applicant's husband's income or the family's expenses to support an assertion that the applicant's husband is suffering financial hardship as a result of separation from the applicant. Further, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of separation from the applicant. Any financial impact from having to maintain two households therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. 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 husband states that the applicant is from Leon, Guanajuato, Mexico, which has become a very unsafe place to live, and the U.S. Department of State has issued warnings about the danger in Mexico. *Declaration of [REDACTED]*. He further states that although he can speak Spanish, he has problems writing and reading Spanish, and would have difficulty earning enough money to support the family if he moved to Mexico. The AAO notes that the U.S. Department of State has issued a Travel Alert for Mexico that expires February 20, 2010, but the alert addressed mainly issues of violence along the United States-Mexico border as well as specific warnings not to travel unnecessarily to parts of Michoacán and Chihuahua. The alert does not contain any specific information about security in the state of Guanajuato, and counsel did not submit any documentation to support the asserts of the applicant's husband about the dangers of relocating to Leon, Guanajuato. 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 record, it appears that any emotional and financial hardship the applicant's husband would experience if she is denied admission and he 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).

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.

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.