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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  
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Services

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FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

JUL 12 2010

IN RE:



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 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. The matter 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 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 a period of one year or more. 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 and child.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 23, 2007.

On appeal, the applicant's wife asserts that she is suffering extreme emotional and financial hardship due to separation from the applicant and having to raise their daughter on her own. Specifically, she states that she and her daughter are now living with her parents because living on their own has proven to be too difficult, and she has been battling depression since his departure. *See Declaration of* [REDACTED] dated December 13, 2007. She further states that their daughter was born with a cyst on her neck and required surgery that would take place after her first birthday, and she needs the applicant with her to comfort her when the surgery takes place. *See Declaration of from* [REDACTED] [REDACTED] The applicant's wife additionally states that she is accustomed to life in the United States and claims she and her daughter would suffer hardship if they relocated to Mexico and would be denied adequate medical care and other opportunities and be separated from family members in the United States. *See Declaration of from* [REDACTED] In support of the appeal, the applicant submitted declarations from his wife and his wife's parents and letters from friends and family members in support of the waiver application. The entire record was reviewed and considered in rendering 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 references to hardship the applicant’s child 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 relatives for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s child 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

The record reflects that the applicant is a twenty-nine year-old native and citizen of Mexico who resided in the United States from December 2000, when he entered without inspection, to September 2006, when he returned to Mexico. The record further reflects that the applicant's wife is a twenty-eight year-old native and citizen of the United States whom the applicant married on November 1, 2003. The applicant resides in Mexico and his wife resides in Council Bluffs, Iowa with their daughter.

The applicant's wife states that she has grown accustomed to life in the United States and she and her daughter would both suffer if they relocated to Mexico. She states that she would have to give up her job in the United States and would be unable to find employment in Mexico because of economic conditions there and because she does not read or write Spanish and can barely speak the language. *Declaration of* [REDACTED] dated December 13, 2007. She further states that she could not live happily in Mexico knowing her family is far away from her, and she loves her parents very much and needs to be close to them. The record indicates that the applicant's wife was born in the United States, and letters from friends and family members submitted with the appeal establish that she has close family and community ties in Iowa where she resides. When considered in the aggregate, the hardships to the applicant's wife that would result from leaving her employment and severing her family and community ties in the United States and having to adjust to social and economic conditions in Mexico and after residing in the United States her entire life would rise to the level of extreme hardship.

The applicant's wife asserts that she is experiencing extreme emotional hardship since being separated from the applicant and having to raise their daughter on her own and is suffering from depression. In her declaration she states that her daughter needs two parents and she and the applicant "had intended to love and raise her as a team." *Declaration of* [REDACTED] dated December 13, 2007. She further states, "The possibility that . . . I will not get my husband back tears me apart," and states that she does not think she can make it much longer. A letter from her mother states that she is "half the person she used to be" and is slowly deteriorating, with difficulty coping mentally, physically, and financially. *Letter from* [REDACTED] dated December 11, 2007. Letters from other relatives and friends also state that the applicant's wife appears to be suffering from depression since being separated from the applicant.

The applicant claims that his wife is suffering emotional and psychological hardship due to separation from the applicant, but no evidence from a doctor or mental health professional was submitted to support the claim that she is experiencing depression, and the record contains no other documentation concerning her mental health or the psychological effects of separation from the applicant. The record does not establish that any emotional difficulties the applicant's wife is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her distress caused by being separated from her husband 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 wife states that her daughter needs surgery to remove a cyst and she needs the applicant by her side for emotional support during the surgery. No medical evidence was submitted to support this assertion, such as a letter from her doctor explaining the nature of the condition, any surgery or other treatment needed, and the prognosis for recovery. 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)). Significant conditions of health of a child of a qualifying relative, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. There record is insufficient to establish that the applicant’s daughter suffers from a serious medical condition that would result in extreme hardship to the applicant’s wife if the applicant is denied admission to the United States.

The applicant’s wife states that she is suffering financial hardship due to loss of the applicant’s income and she has to rely on her family for financial support. No documentation was submitted concerning the applicant’s income when he resided in the United States, his wife’s current income, or the family’s expenses and overall financial situation. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of [REDACTED]* The evidence on the record is insufficient to establish that any financial impact resulting from the loss of the applicant’s income is other than a common result of exclusion or deportation, and the applicant has not established that it would rise to the level of extreme hardship for his 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).

Based on the evidence on the record, the emotional and financial hardship the applicant’s wife would experience if he is denied admission to the United States appears to 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 the 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 his 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.