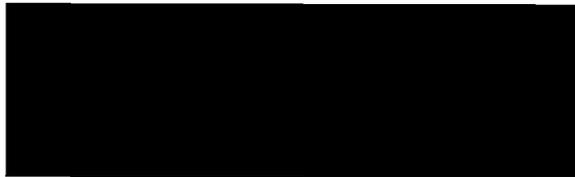


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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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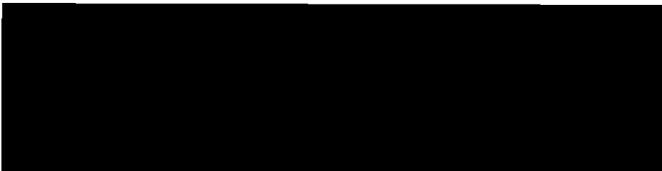
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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 District Director, Mexico City. 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated February 16, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife will suffer extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel*, at 2, received March 16, 2007.

The record contains a brief from counsel; statements from the applicant's wife, the applicant's brother-in-law, and the applicant's sisters-in-law; copies of passports and immigration-related documents for the applicant's wife and her relatives; medical documentation for the applicant and his wife; tax and employment records for the applicant and his wife, and; copies of bills and insurance documents for the applicant and his wife. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

The record reflects that the applicant entered the United States without inspection in or about January 2000. He remained until or about January 26, 2006. Accordingly, the applicant accrued approximately six years of unlawful presence in the United States. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

On appeal, the applicant's wife explains that she and the applicant have been struggling with a medical condition that prevents her from conceiving a child. *Statement from the Applicant's Wife*, dated March 13, 2007. She provides that the applicant has been diagnosed with infertility, and she has suffered from painful menses, as well as pelvic and abdominal pain. *Id.* at 1. She states that they were about to undergo fertility treatment, but that the applicant's departure from the United States interrupted their plans. *Id.* She expresses that her lack of ability to conceive a child has caused much unhappiness for her and her family. *Id.*

The applicant's wife states that she depends on the applicant and that her life has been difficult since his departure. *Id.* She asserts that she has endured financial hardship due to losing the applicant's contribution to their household. *Id.* She lists her expenses, totaling approximately \$1,324 per month, yet she indicates that she earns approximately \$1,280 per month and must rely on family members to help her. *Id.* at 2.

The applicant's wife states that she has had to learn to drive since the applicant departed the United States, as he used to drive her to work. *Id.*

The applicant's wife explains that she cannot go to Mexico, as the applicant currently resides in his home town where there is poverty, no work for her, and no nearby hospital. *Id.* She states that she and the applicant would be unable to obtain fertility treatment in Mexico. *Id.* She provides that her entire family resides in the United States and that she cannot leave them behind. *Id.* She indicates that she is studying to obtain her graduate equivalency diploma (GED) and she wishes to have a better future for her family, which is why she relocated to the United States with her parents. *Id.*

The applicant's wife states that she has been extremely depressed without the applicant. *Id.* at 3. She previously expressed that the applicant is her best friend and that they had never been apart for more than three weeks before the applicant departed for Mexico. *Prior Statement from the Applicant's Wife*, undated.

The applicant's wife's relatives attest that his wife is suffering emotional hardship due to separation from the applicant and her struggle with infertility. *Statements from the Applicant's Wife's Family Members*, dated March 13, 2007. They explain that the applicant's wife has become socially withdrawn, and that she must reside with one of her sisters because she does not earn sufficient income to afford her own apartment. *Id.*

The applicant provides medical documentation to show that his wife has been treated for bronchitis, painful menstruation, nail deformity, pelvic pain, and abdominal pain. *Letter from [REDACTED]*, dated March 13, 2007.

Counsel asserts that the applicant's wife will suffer extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel* at 2. Counsel contends that the applicant's wife's emotional hardship is compounded due to her infertility and unfulfilled desire to have a child. *Id.* at 2-3. Counsel states that not allowing the applicant to enter the United States for a 10-year period will permanently end the applicant's and his wife's opportunity to have a child. *Id.* at 3. Counsel contends that the applicant's wife will suffer hardship should she relocate to Mexico, as all of her significant relatives reside in the United States including her parents and five siblings. *Id.* Counsel indicates that the applicant's wife will endure severe financial hardship without the applicant, as she cannot meet her expenses alone. *Id.*

Counsel asserts that conditions are poor in El Ranchito de San Jose del Carmen where the applicant resides with his family, including a lack of employment, education, and medical facilities. *Id.* at 4. Counsel provides that the applicant and his wife would be unable to receive fertility treatment there. *Id.* Counsel states that the applicant's wife only knows life in the United States now, and she would suffer significant hardship should she relocate to Mexico. *Id.*

Upon review, the applicant has not shown that his wife will suffer extreme hardship should she join him in Mexico for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant has not established that his wife will endure extreme hardship should she join him in Mexico. The applicant's wife expresses that she and the applicant will be unable to obtain fertility treatment or conceive a child in Mexico. However, the applicant has not established with country condition reports and/or other documentary evidence that he and his spouse would lack access to fertility treatment in Mexico. The AAO acknowledges that the applicant's wife is enduring significant emotional difficulty due to the inability to conceive a child, yet the applicant has not shown that their opportunity for conception would be reduced in Mexico.

The applicant has not provided any reports on conditions in Mexico. Nor has he stated whether he works there, what is his income, and what are his expenses. Thus, the AAO lacks sufficient information or evidence to assess the financial circumstances that the applicant's wife would face in Mexico. It is noted that, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant's wife expresses that she does not wish to be separated from her family in the United States. The AAO acknowledges that the applicant's wife has many family members in the United States, and that she would endure emotional hardship should she reside apart from them. However, it is noted that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for a 10-year period from the date of his last departure, until January 26, 2016. While this duration is lengthy, the applicant's wife will not be indefinitely separated from her family members should she choose to reside outside the United States for the duration of the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Further, federal court and administrative decisions have 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, *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 (9th 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. *Hassan v. INS*, *supra*, held further that the 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.

All elements of hardship to the applicant's wife, should she relocate to Mexico, have been considered in aggregate. Based on the foregoing, the applicant has not shown that his wife will suffer extreme hardship should she join him in Mexico.

The applicant has also not shown that his wife will suffer extreme hardship should she remain in the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. While the AAO acknowledges that the applicant's wife's separation from the applicant and her

unfulfilled wish to have a child contributes to her psychological difficulty, the applicant has not shown that it elevates her emotional challenges to extreme hardship. The separation of spouses often results in significant emotional suffering. However, the applicant has not distinguished his wife's emotional challenges from those commonly experienced when spouses reside apart due to inadmissibility. As noted above, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act until January 26, 2016, thus denial of the present waiver application will not create permanent family separation should his wife remain in the United States.

The applicant's wife asserts that she is experiencing financial difficulty due to the applicant's absence, as the applicant earned income and contributed to the household when he was in the United States. However, the applicant has not provided documentation to support all of his wife's noted expenses, including car insurance, gas, ongoing monthly medical bills, or health insurance. The applicant's wife indicated that her health insurance pays 80 percent of her monthly medical expenses, yet it is not clear whether she intends to represent that she pays 20 percent of the claimed \$100 per month, or if \$100 per month constitutes 20 percent of her total medical expenses. Thus, the AAO is unable to determine if her true claimed expenses total \$1,324 or \$1,245. As she states that she earns \$1,280 per month, the applicant has not shown that his wife is unable to meet her financial needs without his assistance. The AAO acknowledges that having the applicant working in the United States and contributing financially to their household would benefit his wife. Yet, he has not shown that she will endure significant economic hardship in his absence.

The applicant has not shown that his wife is unable to continue to receive any needed medical treatment in his absence. Her claim that she pays medical insurance premiums and 20 percent of her medical costs on a monthly basis suggests that she continues to have access to medical care in the United States.

All stated elements of hardship to the applicant's wife, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will endure extreme hardship should he reside outside the United States and she remain for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(a)(9)(B)(v) of the Act. 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 regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.