

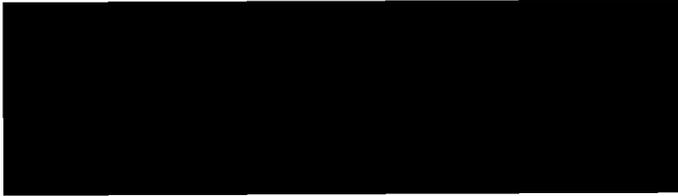
identifying data deleted to
prevent clear and unwarrented
invasion of personal privacy

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

PUBLIC COPY



H6

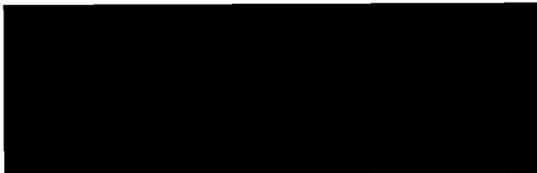
MAR 10 2010

FILE:  Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 775 285

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:



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 children.

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 August 24, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife is experiencing extreme emotional and financial hardship as a result of their separation. Specifically, counsel states that the applicant's wife is having difficulty raising their three children on her own and has to work multiple jobs to try to support her children and send money to the applicant in Mexico as well as travel to Mexico to visit him. *Brief in Support of Appeal* at 5-6. Counsel further states that the applicant's children are suffering tremendous hardship from having to grow up without their father. *Brief* at 6. Counsel additionally asserts that the applicant's wife is suffering from severe depression and thoughts of suicide due to separation from the applicant. *Brief* at 7. In support of the appeal, counsel submitted a declaration from the applicant's wife, letters from friends and family members, medical records for the applicant's daughter, copies of family photographs, a letter from the applicant's wife's employer and copies of pay stubs, copies of income tax returns, a job offer letter for the applicant, birth certificates for the applicant's children, documents related to the mortgage on the home owned by the applicant and his wife, and a letter from the applicant's family's church. 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 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 relatives 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.

The record reflects that the applicant is a thirty-three year-old native and citizen of Mexico who resided in the United States from July 1995, when he entered without inspection, to November 2005, when he returned to Mexico. The record further reflects that the applicant's wife is a twenty-nine year-old native of Guatemala and citizen of the United States whom the applicant married June 25, 2004. The applicant resides in Mexico and his wife resides in Garland, Texas with their three children.

Counsel for the applicant asserts that the applicant's wife is experiencing emotional hardship from being separated from the applicant and having to raise their three children on her own and is suffering from severe depression. In her declaration the applicant's wife states that having to be father and mother to their children is a very difficult task and there are times when she feels she will not make it to the next day. *Declaration of [REDACTED]* She further states that she has thought of ending her life but has pushed those thoughts away for the sake of her children, but she cries for any reason and constantly argues with her older daughter. *Declaration of [REDACTED]* She states, "My family have noticed the changes in my behavior and have tried to help me. . . . I know I need to see a doctor but I have not find (sic) the time to see one." *Declaration of [REDACTED]*

Counsel asserts that the applicant's wife is suffering emotional and psychological hardship due to separation from the applicant, but no evidence concerning the applicant's wife's mental health or the psychological effects of separation from the applicant was submitted. 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's health has deteriorated since the applicant's departure and she misses her father terribly. In support of this assertion counsel submitted medical records for the applicant's daughter indicating that she had a tonsillectomy in April 2006. 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. The record establishes that the applicant's daughter had her tonsils removed in 2006, but there is no indication that she suffers from a serious ongoing medical condition that would result in extreme hardship to her mother if the applicant is denied admission to the United States.

The applicant's wife asserts that she can barely make ends meet financially and must pay the mortgage and other bills and send money to the applicant because he cannot find work in Mexico.

The record contains copies of income tax returns and W-2 forms indicating that the applicant's wife earned about \$25,000 to \$26,000 per year from 2003 to 2005 and a statement dated August 2006 for a mortgage payment of \$1070. No other evidence of the family's expenses was submitted and it is not clear from the record how much the applicant's annual income was when he resided in the United States. Further, even if the applicant's wife's financial situation was negatively affected by the loss of the applicant's income, 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.

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 (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). The applicant made no claim that his wife would experience hardship if she were to relocate with him to Mexico. Therefore, the AAO cannot make a determination of whether his wife would suffer extreme hardship if she moved to Mexico.

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.