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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship and Immigration Services

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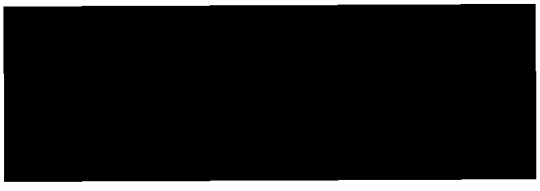
MAR 17 2010

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:

IN RE: [redacted]

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:

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 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 and children.

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 December 13, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife will endure extreme hardship if the applicant is prohibited from entering the United States. *Brief from Counsel*, received February 8, 2007.

The record contains correspondence and a brief from counsel; statements from the applicant, the applicant's wife, the applicant's sons, the applicant's brother- and sister-in-law, and friends of the applicant and his wife; a copy of the applicant's marriage certificate; copies of birth records for the applicant's wife and children; medical documentation for the applicant's wife; vocational training certificates for the applicant and his wife; a copy of the applicant's wife's high school diploma; certificates for the applicant's sons' educational activities; copies of photographs of the applicant and his family; a letter offering the applicant and his wife employment in the United States, and; information regarding the applicant's unlawful presence in the United States. 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 July 2000. He remained until he voluntarily departed in November 2005. Accordingly, the applicant accrued over five years of unlawful presence in the United States. He now seeks admission in K-3 status pursuant to his marriage to a U.S. citizen. 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. An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, or should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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, counsel for the applicant asserts that the applicant's wife will endure extreme hardship if the applicant is prohibited from entering the United States. *Brief from Counsel* at 2. Counsel describes the history of the applicant's relationship with his wife. *Id.* at 1-2. She states that the

applicant's wife has two children from a prior relationship, but that the applicant has treated them as his own and he is the only father they have known. *Id.* at 2. Counsel explains that the applicant's wife became pregnant in 2005, but that the applicant waited in Mexico to pursue his immigrant visa. *Id.*

Counsel provides that the applicant's wife endured significant stress and financial burden in the applicant's absence, which caused her to have a difficult pregnancy. *Id.* at 3. Counsel states that the applicant's wife prematurely gave birth after seven months of pregnancy, and that her doctor attributed the early birth to the stress and anxiety she experienced due to the applicant's absence. *Id.* Counsel asserts that the applicant's wife continued to suffer depression and anxiety after giving birth. *Id.*

Counsel states that the applicant's wife was compelled to quit her job and move into her parents' home due to her pain and depression. *Id.* Counsel asserts that the applicant's wife is unable to support their three children alone, and that her goal of opening a beauty salon is unattainable in her present circumstances. *Id.* Counsel contends that the applicant's wife has lost the support of the applicant and she is suffering emotional hardship. *Id.* Counsel states that the applicant's wife remains under medical supervision for depression. *Id.* at 4.

Counsel asserts that the applicant's wife faces unusual hardship, as she cannot work due to her depression and anxiety. *Id.* at 5. Counsel explains that the applicant's wife's parents have absorbed the applicant's wife's expenses, but that they are struggling financially as a result. *Id.* at 6. Counsel provides that the applicant's wife's dependence on her parents has caused her to feel a sense of humiliation and disappointment. *Id.*

Counsel states that the applicant's children miss the applicant and they consistently ask the applicant's wife when he's coming back to the United States. *Id.* Counsel contends that the applicant's children's emotional hardship is compounding the applicant's wife's challenges. *Id.*

Counsel asserts that the applicant's wife cannot relocate to Mexico due to a lack of employment opportunities and medical care. *Id.* at 7. Counsel notes that the applicant's wife requires treatment for clinical depression and that her family members are funding her medical expenses. *Id.* Counsel states that relocating to Mexico would be detrimental to the applicant's wife's mental health. *Id.* Counsel indicates that the applicant's children would endure hardship should they relocate to Mexico, as they would be separated from their home, culture, language, and relatives in the United States. *Id.*

Counsel asserts that the district director abused his discretion in denying the waiver application, as he did not sufficiently consider the facts presented. *Id.*

The applicant expresses that his family is very important to him, and that he and his wife have worked hard to provide financial and family stability. *Statement from the Applicant*, dated January 1, 2007. He provides that he and his wife have discussed saving for their three children's education so that they can provide good guidance for them as they mature to adulthood. *Id.* at 1. He explains that he has steadily gained success in his employment so that he can provide for his family. *Id.* He

asserts that his economic success would be impossible in Mexico. *Id.* He states that he wishes to obtain training so that he can open a classic automobile restoration shop. *Id.* The applicant contends that his wife and children would have difficulty in Mexico, as people there are less trustworthy. *Id.* He states that they would have less favorable living conditions and his children would lack quality education. *Id.* He explains that his children and wife are suffering emotional and financial hardship due to his absence, and that he wishes to be with them and support them. *Id.*

The applicant's wife explains that the applicant is a kind and loving husband and father to their children. *Statement from the Applicant's Wife*, undated. The applicant's wife states that her mother sold a mobile home to her and the applicant, and that they were happy to have their own residence. *Id.* at 2. She notes that the applicant initially had difficulty finding a job in the United States, but that he began working at a garage. *Id.* She states that the applicant discussed opening a savings account for their children so they could attend college, and that this gesture shows that the applicant cares for her and their children. *Id.* The applicant's wife provides that her last pregnancy was difficult and resulted in her baby being born at seven months. *Id.* She explains that she was under significant stress, yet her mother was with her. *Id.* The applicant's wife states that she and her children moved into her mother's home and her parents supported her financially. *Id.* at 3. She notes that her children miss the applicant and that they ask questions regarding his return. *Id.*

The applicant submits a letter from who states that the applicant's wife is under his care. *Letter from* , dated January 29, 2007. provides that the applicant's wife's last pregnancy was complicated with pre-term labor, anxiety, and depression. *Id.* at 1. He states that the applicant's absence could be a contributing factor to his wife's complications, and that the applicant's wife's condition would improve significantly if the applicant is permitted to rejoin her. *Id.*

The applicant provides letters from his two older sons in which they express that they miss the applicant and wish for him to return to the United States. *Letters from the Applicant's Sons*, undated. The applicant's (then six-year-old) son, , states that the applicant's wife "cries a lot." *Letter from Applicant's Son*, , undated.

The applicant provides letters from his friends who attest that the applicant has strong character and he is supportive of his family and community in the United States. *Letters from the Applicant's Friends*, dated January 17 and 18, 2007.

The applicant's brother-in-law describes his experience growing up in a home without a father figure, and he expresses concern that the applicant's children will encounter problems should they remain separated from the applicant. *Statement from the Applicant's Brother- and Sister-in-law*, dated January 30, 2007. The applicant's sister-in-law states that the applicant's wife is suffering emotional hardship due to separation from the applicant. *Id.* at 2-3. She indicates that she and the applicant's wife's parents have provided financial support to the applicant's wife. *Id.* at 3.

Upon review, the applicant has shown that his wife is enduring significant hardship in his absence, including emotional challenges due to family separation. The AAO has examined the letters from

and the applicant's friends and family members who all attest that the applicant's wife is suffering psychologically without the applicant. It is evident that the applicant's wife will continue to experience emotional challenges should she remain in the United States until the applicant is permitted to return.

The AAO acknowledges that acting as a single parent for three young children presents significant emotional, physical, and economic challenges, and that the applicant's wife faces additional hardship due to the emotional difficulty her sons are experiencing.

Counsel asserts that the applicant's wife is encountering economic hardship without the applicant's support and contribution. The applicant has not submitted any evidence of his wife's expenses, yet it is evident that the needs of an adult and three young children are considerable, and that the applicant's wife may face significant childcare expenses should she attempt to rejoin the workforce in her field of cosmetology.

Considering the hardships to the applicant's wife in aggregate, should she remain in the United States without the applicant, the record supports that she would experience extreme hardship.

However, the applicant has not provided sufficient evidence or explanation to show that his wife will suffer extreme hardship should she and their children join him in Mexico for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant states that he and his family would endure economic hardship should they reside in Mexico. However, the applicant has not described his circumstances in Mexico, such as his present expenses, his income, or his present employment options. The AAO acknowledges that many nationals of Mexico choose to work in the United States due to more favorable employment opportunities. However, without adequate assertions or documentation from the applicant, he has not shown by a preponderance of the evidence that his wife will suffer financial hardship that rises to an extreme level.

The record shows that the applicant's wife is enduring significant emotional hardship due to separation from the applicant. However, stated that the applicant's wife's condition would improve significantly if the applicant is permitted to join her. It is evident that the applicant's wife prefers to have the applicant return to the United States, and that relocating to Mexico presents new challenges and emotional hardship for her. However, the record reflects that the present separation of her family is the primary source of her psychological difficulty, and she would no longer face such separation should she and her children join the applicant in Mexico.

The record contains references to hardships that will be experienced by the applicant's three children. Direct hardship to an applicant's children is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. As correctly asserted by counsel, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. Counsel asserts that the applicant's children would endure hardship should they

relocate to Mexico, as they would be separated from their home, culture, language, and relatives in the United States. However, 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.

The AAO recognizes that the applicant's sons face significant challenges should they relocate to Mexico. Yet, the applicant has not established that they will suffer consequences that can be distinguished from those ordinarily experienced by children whose family relocates due to the inadmissibility of a parent. The applicant has not shown that his sons' hardship would elevate his wife's challenges to an extreme level.

All elements of hardship to the applicant's wife, should she and her children 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 abroad to maintain family unity.

In order to establish eligibility for a waiver under section 212(a)(9)(B)(v) of the Act, the applicant must show that denial of the present application "would result in extreme hardship" to his wife. Section 212(a)(9)(B)(v) of the Act. As discussed above, the applicant has not shown that his wife would suffer extreme hardship should she and their sons join him in Mexico. Therefore, the applicant has not shown that denial of his application for a waiver would necessarily result in extreme hardship to his wife. 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.