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



H6

FILE:  Office: MEXICO CITY (CIUDAD JUAREZ)

Date: **MAR 23 2010**

IN RE: 

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

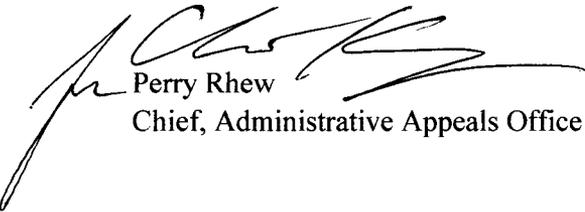
ON BEHALF OF APPLICANT:



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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and 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 reside with her husband and child in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated September 18, 2007.

The record contains, *inter alia*: several letters from the applicant's husband, [REDACTED]; letters from [REDACTED] physician and copies of his medical records; letters from the couple's child's physician; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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.

In this case, the record shows, and the applicant does not contest, that she entered the United States on or about January 1993 without inspection. *See, e.g., Decision and Order of the Immigration Judge*, dated May 30, 2001 (stating that the applicant admitted to the allegations in the charging document and conceding removability). After being served with a Notice to Appear, the applicant attended a number of hearings before an immigration judge. On May 30, 2001, the immigration judge denied the applicant relief and granted her alternate request for voluntary departure. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which affirmed the immigration judge's decision without opinion. *Order of the Board of Immigration Appeals*, dated August 5, 2002. The applicant filed a petition for review with the Court of Appeals for the Ninth Circuit, which dismissed the petition on March 24, 2004. On August 12, 2004, the applicant was removed from the United States.

The applicant now seeks admission within ten years of her 2004 removal. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more, as well as section 212(a)(9)(A) of the Act, as an alien previously removed.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as 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, 565-66 (BIA 1999), provides a list of factors the BIA deems relevant in determining whether an alien has established extreme hardship under the Act. 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.

In this case, the applicant's husband, [REDACTED], states that his health has suffered from the stress of his wife's immigration situation and his son's health conditions. [REDACTED] states that he drives to and

from Mexico every weekend to visit his wife and son and that he is “suffering from various bacteria infections, due to the constant lack of clean drinking water and the improper handling of food in Mexico.” He states he suffers from diarrhea, ulcers, headaches, edginess, fatigue, depression, and sleep apnea. ██████████ contends he avoids going to family functions and other social events because his wife and son are unable to attend. In addition, he states he is the sole financial provider for his family and that due to his health conditions and his wife’s immigration case, his job performance has been suffering. According to ██████████, he has a difficult time concentrating because he is constantly thinking about his family’s well being and his finances. Moreover, ██████████ claims his two-year old son, ██████████ has been suffering with respiratory and intestinal infections since moving to Mexico. According to ██████████, “is always going to visit the doctor [and] constantly has colds . . .” ██████████ states that ██████████ does not eat regularly during the week because his father is not in Mexico with him, but that on weekends when he is with him, “eats everything on his plate.”

Furthermore, ██████████ states he cannot move to Mexico to be with his wife because his “health would aggressively turn for the worse” and he would not have health insurance in Mexico. In addition, ██████████ states that he has been seeing the same doctor for the past three years and is very comfortable with his doctor. In addition, ██████████ contends he has never lived outside of the United States, does not speak Spanish fluently, and would be unable to find a comparable job in Mexico. ██████████ states he has been working for the same clothing company for over eight years and that he has a great job with excellent potential for advancement. He states he would like to go back to school to learn additional computer skills and that his goal is to become a warehouse manager. Additionally, ██████████ contends he fears moving to Mexico because he is an American and will be a target of crime. According to ██████████, if he moved to Mexico, he would lose all of the good credit history he has established in the United States. *Letters from* ██████████ dated November 18, 2007, and August 24, 2006.

A letter from ██████████ physician states that ██████████ health has been “deteriorat[ing] from the enormous stress due to his son’s health conditions and his wife’s immigration situation.” According to ██████████’s physician, ██████████ suffers from constant stress, bacterial infections due to contact with improper handling of food and the lack of clean drinking water, diarrhea, ulcers, depression, sleep deprivation and sleep apnea for which he was prescribed a “C-Pap Machine.” The physician contends ██████████’s health will drastically improve if his wife and son returned to the United States. *Letters from* ██████████ dated October 19, 2007, and September 28, 2007.

A letter from ██████████ physician, ██████████ states that he examined ██████████ on October 2, 2007, and “found him healthy but certainly from the history the child is at risk for developing chronic lung disease and significant dehydration.” According to ██████████, ██████████ reported that ██████████ lives in a home in Tijuana, Mexico, that is “bathed daily with smoke and fumes from a trash dump where they burn tires [and where t]he water supply is . . . substandard.” In addition, ██████████ reviewed the medical records of ██████████, from Mexico. According to ██████████ during the first year of his life, ██████████ had at least nine sick visits in Tijuana, seven of which were for gastrointestinal problems. ██████████ states that the records he reviewed indicate that ██████████ had recurring abdominal pain and diarrhea and “was finally diagnosed with lactose intolerance and gastroesophageal

reflux disease.” In addition, according to [REDACTED], “[e]ach time [REDACTED] gets a common cold he coughs for several weeks afterwards, suggesting that he has a more chronic condition such as intermittent asthma [which] has yet to be diagnosed or treated appropriately.” Furthermore, [REDACTED] contends [REDACTED] has had at least two episodes of sinusitis and two episodes of tonsillitis, conditions that are uncommon for his age group. Moreover, [REDACTED] states that [REDACTED] had breathing problems due to air pollution and “suspect[s] that his cough and breathing difficulty would have responded quickly to an inhaled asthma medication so once again concerns for an accurate diagnosis have been raised.” [REDACTED] concludes that living in the United States would help [REDACTED] experience fewer health-related problems. *Letters from* [REDACTED], dated November 15, 2007, and October 4, 2007.

After a careful review of the record, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if his wife’s waiver application were denied.

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family’s circumstances. However, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

Regarding [REDACTED]’s health issues, although the input of any health care professional is respected and valuable, the letters from [REDACTED] physician do not sufficiently address the prognosis, treatment, or severity of [REDACTED]’s purported medical problems. For instance, although [REDACTED]’s physician states that [REDACTED] suffers from bacterial infections, diarrhea, and ulcers, the letter does not provide any details regarding how often [REDACTED] has experienced these problems, what treatment he requires, or whether he requires assistance. Similarly, although the letters state that [REDACTED] has sleep apnea and was prescribed a “C-Pap Machine,” there is no explanation in plain language describing [REDACTED]’s sleep apnea and the treatment required. Moreover, there are no copies of medical records that document [REDACTED]’s bacterial infections, diarrhea, ulcers, and sleep apnea. The only medical documentation in the record indicates that [REDACTED] has had kidney stones, a health issue [REDACTED] fails to mention. Furthermore, although the letters purport to describe [REDACTED]’s symptoms as “stress,” “depression,” “social situations,” and “financial,” it is unclear how the physician is familiar with [REDACTED]’s social and financial situation, and there is no indication [REDACTED] was ever given a psychological exam, diagnosed with, or treated for depression. To the extent [REDACTED]’s physician contends [REDACTED] is experiencing stress due to his son’s health issues, there

is no evidence [REDACTED] hardship is beyond what would normally be expected when a parent is separated from his child. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

With respect to the financial hardship claim, the applicant has not submitted any financial or tax documents to support this claim. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In any event, even assuming some economic hardship, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

Furthermore, the record lacks sufficient documentation to substantiate [REDACTED] claims that it would constitute extreme hardship for him to move to Mexico. The applicant has not submitted any evidence of country conditions in Mexico and therefore, there is nothing in the record to suggest that [REDACTED] would be a target of crime if he moved to Mexico. In addition, as described above, the letters from [REDACTED] physician do not provide sufficient details regarding [REDACTED] purported medical problems and, in any event, do not comment on whether some or all of his health conditions might lessen if he relocated to Mexico with his wife and child. Furthermore, although [REDACTED] was born in the United States and has never lived outside of the United States, he does not address whether he has significant family ties in the United States or whether he has any family members in Mexico. The record shows that [REDACTED] is thirty-eight years old and works in a warehouse. Although he may not be fluent in Spanish and may not find “work in [his] chosen field,” [REDACTED] concedes that he can speak basic Spanish. See *Letter from* [REDACTED], dated November 18, 2007. Therefore, there is insufficient evidence to show that [REDACTED] would experience extreme hardship if he moved to Mexico to be with his wife.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s husband caused by the applicant’s inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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. 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.