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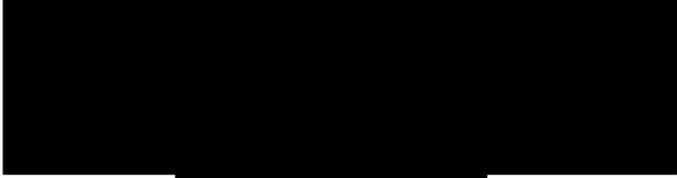
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

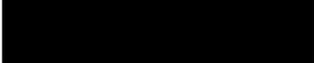


U.S. Citizenship
and Immigration
Services

H6



FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

MAR 29 2010

(CDJ 2004 787 136 relates)

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)

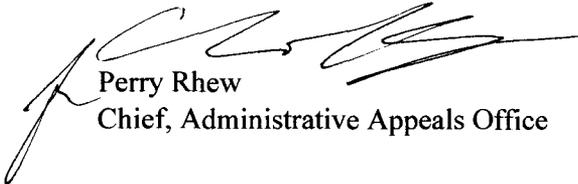
ON BEHALF OF APPLICANT:

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. 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 the Mexico who was found to be inadmissible to the United States pursuant 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 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 his wife in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated March 8, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on January 9, 2003; four letters from a letter from employer; a letter from sister; letters of support; a copy of father's death certificate; a copy of license as an insurance agent; copies of prescriptions; copies of bills and other financial documents; copies of photographs of the applicant and his family; 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)(i) 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.

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

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 he entered the United States without inspection in April 2001 and remained until April 2006. The applicant accrued unlawful presence of five years. He now seeks admission within ten years of his April 2006 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission 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. § 212(a)(9)(B)(v). 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 Board of Immigration Appeals (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 wife, [REDACTED] states that she has been a licensed insurance agent for two years. She states that her supervisor feels that after another year, [REDACTED] will be independent enough to run the office on her own. In addition, [REDACTED] contends that in November 2005, she and her husband bought a house and that the mortgage payment is \$708 per month. She states she now owes more on her house than it is worth and that she cannot sell her home without owing money. According to [REDACTED], she spends a large portion of her income on gas to get to work and has been suffering financially since the applicant's departure from the United States. She states she cannot cover all of their monthly bills by herself. Furthermore, [REDACTED] states that her father passed away when she was seven months old and that her mother raised her, her sister, and her two brothers alone, which made them all very close. [REDACTED] contends that everyone in her family depends on each other a lot and that they all live within ten minutes of each other. She also claims her mother "has been plagued with such illnesses as anxiety, high blood pressure, and nervousness[, and that i]t is a task for her to even be able to drive anymore." [REDACTED] states she takes her mother to appointments and the store, and picks up her medicine. Moreover, [REDACTED] states that she herself has been diagnosed with depression and

now takes medication for it. She states she cries when things begin to go wrong and that she cannot sleep at night. A copy of [REDACTED] prescription for an anti-depressant is in the record.

[REDACTED] also states that she cannot move to Mexico to be with her husband because she cannot get her insurance license transferred to Mexico and she cannot take the continuing education classes necessary to keep her license. She further contends that there is no place for her to live in Mexico and that her husband sleeps on his parents' couch in Mexico where his three siblings and their four children live as well. [REDACTED] states she knows nothing about the culture in Mexico and that she has heard stories about people being kidnapped for ransom in Mexico which frightens her. She contends she wants to have children, but that if she moves to Mexico, her child will not have the same education or healthcare as in the United States. *Letters from* [REDACTED], dated March 29, 2007, October 19, 2006, July 28, 2006, and April 10, 2006.

A letter from [REDACTED] sister, [REDACTED] states that since the applicant departed the United States, [REDACTED] "has had to go without certain necessities and she has been working her shifts plus others just to try to make ends meet." [REDACTED] contends that [REDACTED] has been "stressed and depressed to the point that she feels ill." *Letter from* [REDACTED] dated March 25, 2007.

A letter from [REDACTED] mother, [REDACTED], states that she "would not be able to take her [REDACTED] being far away . . ." [REDACTED] contends she has frequent anxiety and nervous attacks and that if [REDACTED] moved to Mexico, she would be "even sicker with worry." [REDACTED] states that her daughter takes her to appointments and the store, and contends that her family is very close, living in the same town within ten minutes of each other and visiting each other all the time. In addition, [REDACTED] states her daughter is having a tough time managing the bills, keeping up her home, and doing the yardwork. According to [REDACTED], when the applicant's waiver application was denied, [REDACTED] was inconsolable, lost hope, and had to see a doctor for her depression. *Letter from* [REDACTED] dated March 20, 2007. Copies of [REDACTED] prescriptions in the record include medications to treat her arthritis, high cholesterol, high blood pressure, depression, anxiety, and gastric reflux disease.

A letter from [REDACTED] best friend, [REDACTED], states that since the applicant's departure from the United States, [REDACTED] has become very depressed and that although she was really strong at first, she "has deteriorated quite significantly." [REDACTED] describes [REDACTED] as "hang[ing] on by a thin string," and states that she is emotionally **distraught to the point that it has** affected her work as she is constantly using her sick days. According to [REDACTED] gets into "such an emotional distress that she is physically and mentally ill." *Letter from* [REDACTED], dated March 30, 2007.

A letter from [REDACTED] employer states that [REDACTED] has a license to sell Property and Casualty Insurance in the state of Texas and that this license must be renewed every two years after thirty hours of continuing education classes. [REDACTED] employer describes [REDACTED] as a "wonderful employee" and says she has "no doubt that [REDACTED] will become one of our best agents." The employer states that she "will need someone to run this office [and that she is]

currently training [redacted] to take [her] place within the next year.” In addition, the employer contends that if [redacted] were to move to Mexico, it would hurt her professional career as she cannot transfer her Property and Casualty license to Mexico and she could not take the classes necessary to renew her license. *Letter from [redacted]*, dated March 20, 2007.

Upon a complete review of the record, there is insufficient evidence to show that the applicant’s wife has suffered or will suffer extreme hardship if her husband’s waiver application is denied.

The AAO finds that if [redacted] had to move to Mexico to be with her husband, she would experience extreme hardship. The record shows that [redacted] is a licensed insurance agent in Texas with a promising career. According to [redacted] employer, [redacted] will likely soon be running the InsureAuto Agency office in Conroe, Texas. *Letter from [redacted] supra*. It is evident from the record that [redacted] cannot transfer her license to work in the insurance industry in Mexico and she cannot take the continuing education classes she requires to renew her license. In addition, [redacted] would be separated from her mother and her siblings with whom she is very close. The record shows that [redacted] mother has several health conditions and that [redacted] frequently assists her mother. In sum, the hardship [redacted] would experience if she had to move to Mexico is extreme, going beyond those hardships ordinarily associated with a spouse’s removal from or inadmissibility to the United States.

Nonetheless, [redacted] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the couple’s circumstances, if [redacted] remains 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*, 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. *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).

With respect to the financial hardship claim, although the record contains a copy of [redacted] mortgage statement and copies of several bills, there is no evidence addressing to what extent the applicant helped to support the family while he was in the country. The applicant has not submitted evidence addressing his wages, such as a letter from his previous employer, a pay stub, or tax documents. Without more detailed information, the AAO is not in the position to attribute any financial difficulties [redacted] may be experiencing to the applicant’s departure. In any event, even assuming some economic difficulty, the mere showing of economic harm to qualifying family members is insufficient to warrant a finding of extreme hardship. *See 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).

Finally, to the extent [REDACTED] suffers from depression and takes an anti-depressant, there is no evidence the hardship she is experiencing is any greater than those hardships ordinarily associated with a spouse's inadmissibility to the United States. There is no letter from any health care professional or other evidence describing the extent of [REDACTED] depression. In addition, although [REDACTED] contends her depression has begun to affect her work and her best friend contends she is constantly using sick days, *Letter from* [REDACTED], dated March 29, 2007, *Letter from* [REDACTED] *supra*, the letter from [REDACTED] employer does not mention [REDACTED] depression or how it has purportedly affected her work. *Letter from* [REDACTED] *supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 he 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.