

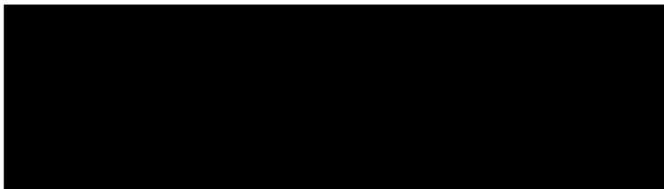
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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#6

MAY 27 2010

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

CDJ 2004 726 224 (relates)

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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).

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 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 his wife and children 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 November 14, 2007.

The record contains, *inter alia*: a letter and an affidavit from the applicant's wife, [REDACTED] 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:

(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.

In this case, the district director found, and the applicant does not contest, that he entered the United States in January 1999 without inspection and remained until September 2006. The applicant accrued unlawful presence of over seven years. He now seeks admission within ten years of his September 2006 departure. Accordingly, he 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 and seeking admission to the United States within ten years of his last departure.

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 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, according to the Form I-130, the applicant wed [REDACTED], a native and citizen of the United States, on April 16, 2001. According to a letter from [REDACTED] the couple has four U.S. citizen children who were, at the time, ages seven, six, one, and two months old. The applicant's spouse is a qualifying relative for purposes of a section 212(a)(9)(B)(v) waiver. Hardship to the applicant's children will be considered only insofar as it results in hardship to the applicant's spouse.

The applicant's wife, [REDACTED], states that she cries herself to sleep every night and wakes up crying every morning. She says she tries to stay strong for her four children, but that she "just can't take it anymore [and] feel[s] like [she] may explode anytime now." According to [REDACTED] her four children range in age from two months to seven years old and, aside from her mother and father-in-law, she has no help. [REDACTED] states that her two younger children tend to sick at the same time and that she needs to help her older two children with their homework. She states she cannot do it all alone and that she "start[s] yelling and [has] to stop [her]self from doing anything else." [REDACTED] states she knows she needs help and that she suffers from depression, but she cannot afford to get help and, with four children, she does not have time to get help. In addition, [REDACTED] states that after her husband departed the United States, her six-year old son started wetting the bed and wets himself during the day. According to [REDACTED], the doctor says there is nothing wrong with her son physically and that "it

must be psychological.” [REDACTED] further states that her four-year old son gets sick often, particularly when they go to Mexico to visit her husband. She states that her son “gets cold very easily and that cold is usually followed by bronchitis.” She states that her son will be wheezing and struggling to breathe and requires the use of a nebulizer. Furthermore, [REDACTED] contends that because she has four young children, she cannot get a job. She states she cannot afford to buy her children diapers and the school uniforms they need. She states her father-in-law gives her \$20 per week and that is all she has for her and her four children to survive. Moreover, [REDACTED] states that she lost the house they were renting because she could not afford the rent and that she and her children now live with her father-in-law in a one-bedroom apartment. She states that her father-in-law wants to move to Mexico and that if he does, she will be homeless with four children. [REDACTED] claims that if her husband’s waiver application is denied, she will have “no choice but to take [her] kids with [her] and go to Mexico,” which will cause new problems, including the fact that there is no Medicaid in Mexico. [REDACTED] contends she will be unable to take her son to the doctor to check on his asthma. She states her children will have “a hard time adjusting from a bilingual environment to an all Spanish one.” In addition, she contends that they will not have enough money to survive in Mexico because her husband earns about \$30 per week and she will be unable to work in Mexico because, as a U.S. citizen, she “[does not] have the papers” and will be living in Mexico illegally. *Letter from* [REDACTED] undated; *Affidavit of* [REDACTED], dated October 3, 2006.

After a careful review of the evidence, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if her husband’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. The BIA and the Courts of Appeals 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 the financial hardship claim, there are no financial documents in the record whatsoever. There is no evidence in the record addressing the applicant’s wages when he was in the United States, such as a letter from the applicant’s previous employer or a pay stub and, therefore, no evidence addressing to what extent the applicant helped to support the family while he was in the country. There is no letter from [REDACTED] father-in-law substantiating her claim that she lost her house because she could not afford the rent, that she and her children moved in with him, and that he gives her \$20 per week. 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. 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).

Regarding [REDACTED] claims that one of her sons has asthma, that another son started wetting himself after the applicant left the country, and that her children get ill frequently, there is no evidence, such as a letter in plain language from a health care professional or copies of medical records, to substantiate these claim. Similarly, there are no letters from any teachers, neighbors, or other individuals describing how the children's hardships have caused [REDACTED] extreme hardship. 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.

Furthermore, regarding [REDACTED] claim that she does not want to move to Mexico, there is no evidence showing that any hardship she may experience would be beyond what would normally be expected. The record shows that [REDACTED] is currently twenty-nine years old and that she and her children speak Spanish. In addition, there is no indication in the record that she has any physical or mental health issues that would render her transition to moving to Mexico an extreme hardship. In sum, there is no evidence that the applicant's wife's relocation to Mexico is unique or atypical compared to other individuals affected by deportation or inadmissibility. See *Perez, supra*.

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