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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

H6

MAY 28 2010

FILE:

[REDACTED]

Office: MEXICO CITY (CIUDAD JUAREZ) Date:

(CDJ 2005 651 099 relates)

IN RE:

Applicant:

[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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
for

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 daughter.

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 31, 2007.

On appeal, the applicant's wife asserts that she and the applicant's daughter are suffering financially, socially, and emotionally due to the applicant's absence from the United States. *Statement from the Applicant's Wife*, dated January 17, 2008.

The record contains, but is not limited to, statements from the applicant, the applicant's wife, a counselor for the applicant's wife, the applicant's mother-in-law, the applicant's sisters-in-law, the applicant's brother-in-law, and cousins of the applicant's wife; a copy of the applicant's marriage certificate; copies of birth records for the applicant, his wife, and his daughter; tax and financial documentation for the applicant and his wife, and; copies of photographs of the applicant and his family. 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 1999. He remained until March 2, 2007. Accordingly, he accrued unlawful presence from the date he reached 18 years of age, January 2, 2000, until March 2, 2007. This period totals over seven years. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully 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. 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, the applicant's wife asserts that she and the applicant's daughter are suffering financially, socially, and emotionally due to the applicant's absence from the United States. *Statement from the Applicant's Wife* at 1. She explains that she always took care of her daughter without the need to work when the applicant supported their family, but that she now has to work full-time due to his absence. *Id.* She states that she works five or six days per week to support her daughter, the applicant, and herself, as the applicant is unable to earn income in Mexico greater than that needed for his rent and food. *Id.* She notes that she earns \$8.24 per hour, and she must pay \$300 per month in rent, \$100 per week in childcare, and meet other expenses including car insurance, diapers, food, and other essentials. *Id.*

She expresses that she is unable to share special moments as a normal family, and that she is impacted by her daughter's emotional difficulty. *Id.* The applicant's wife states that she is unable to pursue her goal of becoming a registered nurse without the applicant's presence. *Id.*

She explains that she and her daughter go to Tijuana to visit the applicant once per month, but that the trips put them in danger because her automobile is unreliable and she lacks funds to have it serviced. *Id.*

The applicant's wife indicates that she had a miscarriage in November 2006 and that it contributed to her depression. *Id.* at 1-2. She adds that she has been having headaches, fatigue, and a loss of appetite. *Id.* at 2. She states that she suffered an injury to her hand as a child and that it causes her pain when she works more than six hours. *Id.*

The applicant's wife previously stated that the applicant and their daughter had health insurance through the applicant's employment, but that they lost the coverage. *Prior Statement from the Applicant's Wife*, received April 12, 2007. She noted that she resides with her mother. *Id.* at 1.

The applicant provides a letter from a group home counselor, [REDACTED], who states that she has had sessions with the applicant's wife and family. *Letter from [REDACTED]*, dated January 18, 2008. She indicated that the applicant's wife must take care of her two younger siblings while her mother works, and then she must work herself when her mother arrives home in order to earn funds to support her daughter. *Id.* at 1. [REDACTED] reports that the applicant's wife appears very stressed and that she is experiencing financial difficulty. *Id.* She asserts that the applicant's wife and daughter would benefit from the applicant's return to the United States. *Id.*

The applicant described the history of his relationship with his wife. *Statement from the Applicant*, dated February 7, 2007. He explained that his father-in-law encouraged him to seek permanent residence so he could obtain a better job. *Id.* at 1. He stated that his parents reside in Mexico, and that he intended to reside with them and seek employment until he can return to the United States. *Id.* He stated that his wife will be deprived of his economic support should he remain in Mexico. *Id.*

The applicant provided statements from his relatives who attest that he is a hard worker, good father, and good husband.

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States at the present time. The applicant has not asserted that his wife will suffer hardship should she and their daughter join him in Mexico for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. In the absence of clear assertions from the applicant, the AAO may not speculate as to the hardship the applicant's wife may endure. 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. Thus, as the applicant has not stated that his wife will face challenges should she relocate to Mexico, he has not shown that such relocation will result in extreme hardship.

The applicant has shown that his wife will endure extreme hardship should she remain in the United States and endure family separation for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, until March 2, 2017. The AAO recognizes that the separation of spouses often results in significant emotional difficulty. The applicant's wife and [REDACTED] have stated that the applicant's wife is enduring substantial emotional hardship due to being separated from the applicant. The applicant has provided statements that clearly show the closeness between him and his wife, their long history together, their joint participation in raising their young daughter, and the level of financial and emotional dependence his wife had on him prior to his departure to Mexico.

The applicant's wife asserts that her daughter is experiencing emotional difficulty due to separation from the applicant. Direct hardship to an applicant's child 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. 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. The AAO acknowledges that the applicant's wife's psychological difficulty is compounded by the emotional suffering of her daughter.

The applicant has provided sufficient explanation and evidence to show that his wife is encountering financial challenges in his absence. While the record lacks a complete account of the applicant's wife's present income or expenses, the AAO acknowledges that the costs of supporting an adult and young child are substantial, and that the expenses listed by the applicant's wife comport with common household needs.

Considering all elements of hardship to the applicant's wife in aggregate, should she remain in the United States without the applicant she will suffer extreme hardship.

However, an applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, and 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). As the applicant has not shown that his wife will suffer extreme hardship should she and their daughter join him in Mexico, he has not established that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(a)(9)(B)(v) of the Act.

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.