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U.S. Citizenship and Immigration Services
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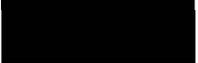
U.S. Citizenship
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Services

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FILE:



Office: MEXICO CITY

Date:

JUN 12 2009

IN RE:



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

ON BEHALF OF PETITIONER:



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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and 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 resided in the United States from 1994, when he entered the country without inspection, to February 2006, when he returned to Mexico to apply for an immigrant visa. He was found to be inadmissible to the United States under 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 a period of one year or more. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. He 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 return to the United States and reside with his wife and child.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated April 12, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife is suffering extreme hardship as a result of being separated from the applicant, and U.S. Citizenship and Immigration Services ("USCIS") failed to consider in the aggregate all of the factors that are contributing to such hardship. Counsel further asserts that events have occurred since the denial of the waiver application that contribute to the hardship experienced by the applicant's wife, and stated that additional documentation would be submitted to support this assertion.¹ In support of the waiver application, former counsel submitted several letters and affidavits from the applicant's wife, a copy of their son's birth certificate, a transcript from Lee College for the applicant's wife, letters from the applicant's wife's doctor and dentist, letters from family members, copies of bills and other financial documents, medical records for the applicant's son and a letter from his doctor, and a letter from the church attended by the applicant and his wife. The entire record was reviewed and considered in arriving at a 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.

....

¹ The AAO notes that counsel indicated on the Notice of Appeal to the AAO (Form I-290B) that a brief and/or additional evidence would be submitted to the AAO within 30 days, and as of this date, over two years later, no additional documentation has been received.

- (v) Waiver. – The Attorney General [now Secretary, 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 contains references to hardship the applicant’s son would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s child will not be separately considered, except as it may affect the applicant’s spouse.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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 addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.)

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere

showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-six year-old native and citizen of Mexico who resided in the United States from 1994, when he entered without inspection, until February 2006. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from April 1, 1997, the date section 212(a)(9)(B)(i) of the Act entered into effect, to February 2006, when he returned to Mexico. The applicant's wife is a twenty-five year-old native and citizen of the United States. The applicant currently resides in Mexico and his wife resides in Baytown, Texas.

The applicant's wife states that if she had to reside in Mexico, there would be a "large language and cultural barrier for me which would also make it hard for me to find a job." *Affidavit of* [REDACTED] dated January 31 2006. She further states that she has several family members who live in close proximity, including her two siblings who reside around the corner from her house and whom she visits at least once a week, and a grandmother, several cousins, and aunts and uncles who live in Texas. She further states that her mother, stepfather, and stepbrothers live a few hours away in Louisiana, her stepmother and stepbrothers and stepsisters live in the same town and visit frequently, and her father will be moving back to Texas from New Jersey shortly. *Id.* Letters from the applicant's parents and brother and sister also indicate that their family is very close and see each other often, and her brother further states: "My mother's family is all of American origin, and my father's is of Italian, we are not very familiar with Mexico." *Letter from* [REDACTED] dated January 11, 2006.

The AAO finds that the evidence on the record establishes that the emotional and financial effects of relocating to Mexico and having to adjust to the language, culture, and economic and social conditions there after residing in the United States her entire life would rise to the level of extreme hardship for the applicant's wife. Letters and other documentation on the record establish that the applicant's wife is not a native Spanish speaker and that she has significant family ties in the United States, including her parents, siblings, and other extended family, and no ties to Mexico. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998).

Counsel further asserts that the applicant's wife is suffering extreme emotional and financial hardship as a result of being separated from the applicant. The applicant's wife states that she and her son had to return from Mexico, where they stayed with the applicant from February to May 2006, because she had to start working so they would not lose their car and home. *Letter from* [REDACTED] dated August 1, 2006. She further states that she is working but still cannot pay the mortgage, car payment, utility bills, and childcare costs, and was just approved for food stamps. She additionally states that she is suffering from major depression and it is difficult to live without the applicant's emotional and financial support. *Id.* In support of these assertions the applicant's wife submitted a letter from their mortgage company dated July 7, 2006 indicating that their account is delinquent. The record contains no subsequent documentation concerning the status of their mortgage and no evidence to support her assertions about her financial situation, such as documentation of her employment and income, difficulty in finding childcare, or her receipt of

public assistance. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The evidence on the record is insufficient to establish that the financial impact of the loss of the applicant's income rises to the level of extreme hardship for the applicant's wife. See *INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's wife states that she is suffering from major depression, but no evidence was submitted concerning her mental health to support this assertion. The record is insufficient to establish that any emotional difficulties she is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her distress caused by separation from her husband is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The emotional and financial hardship the applicant's wife would experience if he is denied admission to the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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. 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.