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U.S. Citizenship
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FILE:

Office: ST. LOUIS

Date:

AUG 20 2008

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i), 8 U.S.C. section 1182(i).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the District Director, St Louis, Missouri, and 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. The applicant entered the United States without inspection in August 1996 and remained unlawfully in the United States until March 2001. On April 4, 2001, the applicant was admitted to the United States in H-2B status with a period of authorized stay until December 5, 2001. The applicant and his spouse, [REDACTED] were married in the United States on April 7, 2004. On or around September 24, 2004, the applicant's spouse, a U.S. citizen, filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary, which was accompanied by the applicant's Application to Register Permanent Resident or Adjust Status (Form I-485). Although the Form I-130 has never been stamped approved, it appears from the record that it was approved, as adjudication of the Form I-485 was commenced. On February 14, 2005, a notice was sent to the applicant informing him that he was required to file an Application for Waiver of Ground of Inadmissibility (Form I-601). The applicant filed this application on June 1, 2005.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated May 23, 2006.

On appeal, counsel contends that the applicant has sufficiently demonstrated that the bar to admission will cause his wife extreme hardship. *Appeal Brief* at 2-3. Counsel asserts that the applicant's spouse suffers from, and is receiving treatment for, depression, a condition that prevents her from working and that would be exacerbated if she were separated from her husband or if she relocated to Mexico. *Id.* at 2-4. Counsel contends that the district director improperly "downplay[ed] the severity" of the applicant's spouse's condition because of her limited visits to her psychologist. *Id.* Counsel also observes that the applicant's spouse recently had an ovarian cyst surgically removed and requires follow-up care that counsel asserts she is unlikely to get in Mexico. *Id.* at 5. Counsel further contends that because the applicant's spouse does not work, she will be unable to continue receiving medical care for her health conditions in the United States if the applicant is removed. *Id.* at 5. Counsel asserts that the applicant will be unable to earn more than \$40-\$50 per week in Mexico, which will be insufficient to support his spouse and care for her medical needs. *Id.* at 5-6.

The record contains, among other documents, affidavits from the applicant, the applicant's spouse and her mother; a letter from [REDACTED] MA and Ph.D candidate in psychology; medical articles and reports concerning anxiety disorders; medical records relating to the surgical removal of the applicant's spouse's ovarian cyst; medical articles concerning ovarian cysts; articles concerning healthcare inequality in Mexico; and reports on country conditions in Mexico. The entire record has been reviewed and considered in rendering a decision on the appeal. As stated above, although the applicant's Form I-130 petition does not bear an approval stamp, the AAO will adjudicate the appeal of the decision denying the Form I-601 waiver application on the assumption that it was approved.

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

- (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 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 reflects that the applicant entered the United States without inspection in August 1996 and remained unlawfully in the United States until March 2001. The applicant subsequently sought admission to the United States. Therefore, the applicant was unlawfully present from April 1, 1997 until March 2001, a period in excess of one year. The applicant has not disputed that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

In addition, the Ninth Circuit Court of Appeals in reversing the denial of suspension of deportation to the petitioner in *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), *see also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is generally appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In her affidavit, the applicant’s spouse states that she was born in the United States and that her entire extended family resides in the United States. She indicates that she does not work, partly because of her struggles with depression. She asserts that she has suffered from anxiety problems since she was a child. The applicant’s spouse states that her husband earns approximately \$3500 per month, and that she is wholly dependent on him financially. She asserts that it would be “impossible” for her to go to Mexico and be separated from her family. She contends that the quality of the healthcare system in Mexico is poor, and that she would not be able to get adequate medical care there because her husband would be unable to earn more than \$40 to \$50 per week. She asserts that if she were separated from her husband, she would become “terribly depressed.”

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s spouse faces extreme hardship the applicant is not granted a waiver of inadmissibility.

The AAO acknowledges that the applicant’s spouse, a native of the United States with no close family ties in Mexico, would suffer extreme hardship if she relocated to Mexico with the applicant. The evidence in the record concerning economic conditions and the healthcare system in Mexico support the applicant’s claim that he has lower earning potential there, and that his spouse would experience a significantly lower standard of living if she resided there. This financial hardship, when combined with the emotional hardship the applicant’s spouse would experience in leaving her family and friends and settling in a foreign country, rises to the level of extreme hardship.

However, the applicant has not demonstrated that his spouse will experience extreme hardship if she remains in the United States. The AAO acknowledges that the applicant's spouse would suffer emotionally in the applicant's absence, but the applicant has not demonstrated that this emotional hardship, when combined with other hardship factors, rises to the level of extreme hardship. As noted by the district director, in spite of the claim by the applicant's spouse that she has suffered from an anxiety disorder since childhood, and that she is unable to work as a consequence thereof, the record contains no evidence that the applicant ever sought treatment for her condition prior to visiting ██████████ in February 2005. In his letter, ██████████ does not indicate that he is providing ongoing treatment to the applicant, but indicates that he has seen the applicant for a total of two sessions and that she has symptoms "consistent with a diagnosis of . . . generalized anxiety disorder" and "some relatively mild depressive symptoms." Although the input of any mental health professional is respected and valuable, the AAO must consider that the submitted letter is based on only two interviews between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the generalized anxiety disorder allegedly suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on what ██████████ himself refers to as "limited experience," do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. It is also noted that ██████████ does not address the claim made by the applicant's spouse that her mental condition incapacitates her to the extent that she cannot work. Likewise, the record lacks sufficient evidence showing what, if any, continuing care the applicant requires as a result of surgery to remove an ovarian cyst in 2006.

The AAO acknowledges that the applicant's spouse does not work and is financially dependent on the applicant. However, it has not been demonstrated that the applicant's spouse, a 22-year-old native of the United States, is incapable of pursuing educational or employment opportunities in order to support herself. The record shows that the applicant and his spouse, who were married in 2004, have no dependent children. The record also shows that the applicant's spouse enjoys significant family support in the United States. The AAO acknowledges the evidence that the applicant is unlikely to earn enough money in Mexico to continue his current level of financial support to his spouse. However, the mere loss of current employment or the inability to maintain one's present standard of living or pursue a chosen profession does not constitute extreme hardship. *Matter of Pilch*, 21 I. & N. Dec. 627, 631 (BIA 1996).

The AAO recognizes the hardship inherent in separation, but finds that the hardship described by the applicant is the common result of removal or inadmissibility, and it does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

In this case, the record does not contain sufficient evidence to show that the 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. 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 rests 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.