

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H3

FILE:

Office: SAN FRANCISCO, CA

Date:

FEB 22 2007

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 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 District Director, San Francisco, California, denied the waiver application, and it 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 in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant is the spouse and father of U.S. citizens. 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 reside in the United States with his spouse and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 17, 2002.

The record reflects that, on December 27, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. On February 15, 2001, the applicant appeared at Citizenship and Immigration Services' (CIS) San Francisco, California District Office. The applicant testified that, in 1988, he entered the United States and remained unlawfully in the United States until 1994. He testified that, in 1995, he returned to the United States and remained unlawfully in the United States until December 14, 1998, the date on which he returned to Mexico. The record reflects that, on January 9, 1999, the applicant was admitted to the United States as a visitor. On May 15, 2001, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel contends that the district director did not address all the factors dictated by the Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999), failed to address psychological evidence in regard to the applicant's wife and failed to consider the factors cumulatively in determining whether extreme hardship had been established. *See Applicant's Brief*, dated June 10, 2002. In support of her contentions, counsel submitted the referenced brief, an updated affidavit from the applicant's spouse, updated financial documentation, and updated letters from friends and family. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9)(B) 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 district director based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admission to being unlawfully present in the United States from April 1, 1997, the date of enactment of the unlawful presence provisions of section 212(a)(9)(B)(i) of the Act, until December 14, 1998, the date on which he last returned to Mexico. Counsel does not contest the district director's determination of inadmissibility.

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 alien himself experiences upon deportation is not considered in section 212(a)(9)(B)(v) waiver proceedings. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(a)(9)(B)(v) cases. Thus, hardship to the applicant's child will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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. *Cervantes-Gonzalez, Supra* at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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. *Supra.* at 566. The BIA has held:

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).

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).

The record reflects that, on October 8, 1999, the applicant married [REDACTED], a U.S. citizen by birth. The applicant and [REDACTED] have a six-year old son who is a U.S. citizen by birth. The record reflects further that the applicant and [REDACTED] are in their 30's and [REDACTED] may have some health concerns.

Counsel contends that the most important factor in determining extreme hardship is separation from family. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998), the Ninth Circuit Court of Appeals (the Ninth Circuit) held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. However, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon removal. The Ninth Circuit emphasized that the common results of removal are insufficient to prove extreme hardship. Therefore, while separation from family members may, in itself, constitute hardship, the hardship must still be beyond the common results of removal to constitute "extreme hardship."

Counsel asserts that [REDACTED] will suffer extreme hardship if she remains in the United States without the applicant because, since moving to Arizona, [REDACTED] has been unemployed and depends solely on the applicant for support of herself and their child. Counsel asserts that [REDACTED] is distinguished from other people who have more stable family backgrounds because, at the age of eight, she was sent to live with her maternal grandparents and had no contact with her biological father. Counsel asserts that, [REDACTED] does not wish for her child to experience the loss she experienced in her childhood. Counsel asserts that, due to her unique background and as stated in the psychological report, [REDACTED] would suffer tremendous emotional hardship if she had to forgo any of her relationships, specifically those between her, the applicant, and her mother. Counsel asserts that, therefore, separation from the applicant would cause [REDACTED] double the pain and devastation that an individual with a stable emotional background would suffer. [REDACTED] in her affidavits, states that they are a very happy family and work very hard to make sure that their child is always under their care and given appropriate attention. She states it would be devastating to her and her son if their family is separated and her husband has shown her the love and care that she never experienced as a child. She states that a single parent raised her and she does not want her son to experience what she did when she was growing up. Finally, she states that she does not know what she would do without the applicant.

The psychological report submitted in relation to the applicant's spouse indicates that family separations and ruptures constitute the most difficult experiences that [REDACTED] has known. The evaluation of [REDACTED] notes that she was raised in her grandparents' strict environment until, at the age of 16 years, she returned to live briefly with her mother. Conflict with her mother resulted in [REDACTED] moving in with her boyfriend and his family. While [REDACTED] has been reunited with and is now good friends with her mother, the report states she remains estranged from her father. It finds that if the applicant were forced to return to Mexico he would be replaying the role of absent father that has troubled [REDACTED] all of her life and, even though she has no prior reports of insomnia, she has recurring dreams of the applicant's removal that cause her to be unable to return

to sleep. The psychological report states that [REDACTED] seeks to build a life around solid and dependable family relationships such as were not available to her when she was a child and to provide her son with a memorable childhood that is not fraught with disappointment and abandonment, as was hers. The psychological report states that it would obviously be a tremendous emotional hardship if [REDACTED] had to forgo any of her family relationships, because the family network contains keys to her recovery of self-esteem and achievement of happiness as a mature woman.

Financial records indicate that, in 2000, [REDACTED]'s yearly salary was approximately \$32,000. While counsel asserts that [REDACTED] is now unemployed since the family's move to Arizona, there is no evidence in the record to suggest that she would be unable to resume employment and generate income sufficient to support herself and her child. The record reflects that [REDACTED] has family members in the United States, such as her mother and stepfather, who may be able to assist her physically and financially in the absence of the applicant. The record shows that, even without assistance from the applicant or other family members, [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. There is no evidence in the record to suggest that [REDACTED] is unable to perform work or daily activities due to a physical or mental illness. While it is unfortunate that [REDACTED] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. The AAO acknowledges that [REDACTED] may have to lower her standard of living. However, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to [REDACTED] if she had to support herself and her child without additional income from the applicant, even when combined with the emotional hardship described below.

While the psychological report indicates that [REDACTED] underwent one unsuccessful therapy session when she was a teenager, the record does not contain evidence that [REDACTED] has received psychological treatment or evaluation other than during the appointment used to write the psychological report. Therefore, the psychological report has limited evidentiary weight. Additionally, the AAO notes that the psychological report does not diagnose [REDACTED] with any mental illnesses and there is no evidence in the record to indicate that [REDACTED] would require treatment for any psychological effects the applicant's removal would have upon her. Counsel asserts that [REDACTED] would suffer greater emotional hardship than a person with a more stable background. However, there is no evidence in the record to indicate that she has ever been diagnosed with a mental illness or received treatment for any psychological consequences of such a background. There is no evidence in the record that [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon removal. While [REDACTED] will experience distress as a result of separation from her spouse and the separation of her child from his father, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. Additionally, the record reflects that [REDACTED] has family members, such as her mother and stepfather, in the United States who may be able to assist her physically and emotionally in the absence of the applicant.

Counsel asserts that [REDACTED] would suffer extreme hardship if she were to accompany the applicant to Mexico because she speaks no Spanish and both she and her child have no ties to Mexico. Counsel asserts that [REDACTED] would endure severe hardship if she were uprooted from the United States and thrust into dire poverty in a country where she has never lived. Counsel asserts that this cannot be construed to merely be an "inconvenience." Counsel asserts that [REDACTED] would be separated from her mother and extended family in Arizona and given her history of abandonment the impact of relocation to Mexico can only be described as "extreme." Counsel also asserts that the applicant's and [REDACTED]'s employment opportunities in Mexico

would result in abject poverty, as is demonstrated by [REDACTED] description of the applicant's family's living conditions in Mexico and country conditions information counsel provided. Counsel asserts the applicant has no expectation of finding employment that would guarantee him advancement and stability in Mexico. [REDACTED] in her affidavit, states that her five-day trip to Mexico in 1998 was very strange. She states that she did not understand the language and that, even though she was greeted by the applicant's family with lots of hugs and warmth, she could not get over the fact that their home was so small. She states that there was no running hot water in the household and no refrigerator, requiring the family to buy groceries daily. The AAO notes that, despite counsel's assertions, there are no country conditions reports in the record.

Having analyzed the hardships counsel and [REDACTED] claim [REDACTED] will suffer if she were to accompany the applicant to Mexico, the AAO finds that they do not constitute extreme hardship. Counsel asserts that [REDACTED] and the applicant would not be able to find employment in Mexico that was comparable to their employment in the United States. There is no evidence in the record to confirm that [REDACTED] and the applicant would be unable to obtain any employment in Mexico and economic detriment of this sort is not unusual or extreme. *See Perez v. INS, Supra; Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir.1986). As discussed above, there is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental condition that could not be treated in Mexico. While the hardships faced by [REDACTED] with regard to her and her child adjusting to the language, culture, economy, environment, separation from friends and family, and an inability to obtain the same opportunities they would receive in the United States are unfortunate, they are what would normally be expected by any spouse accompanying a removed alien to a foreign country. Additionally, the AAO notes that, as U.S. citizens, the applicant's spouse and child are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if she remained in the United States without the applicant.

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 would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish 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, 8 U.S.C. § 1186(a)(9)(B)(v). 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 an 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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.