



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: PHOENIX, AZ Date: JUN 06 2007

IN RE: Applicant: [REDACTED]

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:



NOTICED

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Phoenix, Arizona. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The applicant is a native and citizen of Mexico. The applicant 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. The applicant presently seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director determined the applicant had failed to establish that her husband would suffer extreme hardship if she were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 Application) was denied accordingly.

On appeal the applicant asserts, through counsel, that: 1) the district director failed to properly weigh the hardship factors in her case; 2) suspension of deportation hardship standards should apply to the present matter, and; 3) her husband will suffer extreme hardship if her Form I-601 application is denied.¹

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

[A]ny 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.

The record is unclear as to when the applicant initially entered the United States. Her Form I-130, Petition for Alien Relative, filed on November 7, 1997 indicates an entry without inspection in October 1995. Her G-325, Biographic Form, dated March 23, 2000 indicates that she lived in Mexico until May 1997, at which point she moved to and remained in the United States. A page from her passport indicates that she was admitted to the United States on August 8, 1999, but there is no indication when she departed prior to that admission. The applicant has not contested her inadmissibility or provided the requested information on her status between May 1997 and March 2000 when her Form I-485 application to adjust status was filed. The AAO finds that the preponderance of evidence shows that the applicant accrued at least one year of unlawful presence between May 1997 and March 2000. The applicant has departed the United States pursuant to advance parole on at least two occasions, thus triggering the inadmissibility provisions of section 212(a)(9)(B)(II) of the Act.

¹ It is noted that counsel indicated on the Form I-290B Notice of Appeal to the Administrative Appeals Office (Form I-290B) that she would send a brief and or evidence to the AAO within 30 days of filing the Form I-290B. No brief or evidence was received by the AAO within the requested time period. The AAO subsequently faxed a request for copies of any documents that may have been submitted by counsel in the applicant's case. Counsel was advised to respond to the faxed AAO request within five business days. The AAO received no response from counsel.

Section 212(a)(9)(B)(v) of the Act provides that:

[T]he Attorney General [now Secretary, Department 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 applicant is married to a U.S. citizen. The applicant's husband is thus a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. It is noted that U.S. citizen children and U.S. lawful permanent resident children are not qualifying relatives for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The hardship claims made with regard to the applicant's daughter shall therefore not be considered except as it may affect her father.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) stated that:

Although it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion.

Referring to numerous court decisions that interpreted the term "extreme hardship" for waiver and suspension of deportation purposes, the Board, in *Matter of Cervantes-Gonzalez*, outlined the following factors it deemed relevant to determining extreme hardship to a qualifying relative:

The 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.

The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996). Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. See *Perez v. INS*, *supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The record contains the following evidence relating to [REDACTED]'s extreme hardship claim:

videotaped statement, reflecting in pertinent part that he has lived in the United States for over eighteen years, but that he is originally from Guadalajara, Mexico. Mr. indicates that he has family in Guadalajara, and that he and the applicant met in Guadalajara when he lived and worked there. states further that he married his wife in Guadalajara and he indicates that his eldest son was born in Guadalajara while he lived there. indicates that he and his family now live in the United States. He states that he enjoys his home and the time that he spends with his wife and two children. states further that his wife is the center of their family, and that it would be hard to live without her because he would miss her, and because she takes care of the children and the home. indicates that it would also be difficult for him to return to Mexico with his wife because the economy in Mexico is bad, and he is unsure what type of work he could find there, or what he would do in Mexico.

The applicant's marriage certificate reflecting that she and her husband were married in Guadalajara on September 6, 1989, and that both resided in Guadalajara at the time of their marriage.

The birth certificate of the applicant's eldest son reflecting that he was born in Guadalajara on February 12, 1994, and that the applicant and resided in Zapopan, Mexico at the time of their son's birth.

Copies of the family's approximate \$324/month mortgage payment, and copies of the family's car and life insurance bills.

Copies of 2003 and 2004, U.S. Department of State, Country Conditions Reports and Consular Information Sheets on Mexico indicating in pertinent part that Mexican law recognizes dual nationality for Mexicans by birth, and that crime, often violent, exists in Mexico, especially in Mexico City, Tijuana, Ciudad Juarez and Nuevo Laredo.

Documents reflecting that began working as an independent operator/distributor for Kellogg Supply around 2002.

An Independent Contractor Agreement between and Kellogg Supply reflecting in pertinent part that as an independent contractor, delivers products as required to Kellogg Supply customers. The agreement specifies that works independently and that he is not a Kellogg Supply employee for tax or employee entitlement purposes.

A Behavioral Health Evaluation concluding in pertinent part that:

[I]f his wife is deported, it seems that this man will have to resolve many problems at the same time with limited economic and psychological resources. It is predicted that he will return to Mexico with great bitterness, have to find a way to make a

living, settle issues with his siblings and see to it that his children find for themselves a different future.

Copies of Internet travel service prices for travel between Phoenix and Guadalajara, reflecting roundtrip airfare prices of \$541 and above.

Federal tax and pay stub documentation for [REDACTED] and the applicant.

The record also contains information discussing the emotional and educational hardship that the applicant's then, six-year-old U.S. citizen daughter would face if the applicant were denied admission into the United States. The information lacks probative value in the present matter, as it does not relate to hardship that [REDACTED] would suffer if the applicant were denied admission into the United States.

Upon review of the totality of the evidence, the AAO finds that the applicant has failed to establish that her husband would suffer hardship that goes beyond that ordinarily associated with removal or inadmissibility, if he remained in the U.S. without the applicant. The evidence in the record fails to demonstrate that the Mr. [REDACTED] relies on the applicant financially, and the record lacks any evidence to indicate that the applicant's absence would cause [REDACTED] extreme financial hardship. Moreover, the AAO notes the U.S. Supreme Court holding in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." The applicant also failed to establish that [REDACTED] would suffer extreme emotional hardship if the applicant were denied admission into the United States. The Board held in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. Moreover, it is noted that the Behavioral Health Evaluation contained in the record is vague and does not establish that [REDACTED] would suffer emotional or psychological hardship beyond that normally associated with removal or inadmissibility, if the applicant's Form I-601 application were denied. The record contains no other evidence to indicate that [REDACTED] would suffer extreme hardship if the applicant were denied admission into the United States and he remained in the United States.

The applicant also failed to establish that her husband would suffer hardship beyond that normally experienced upon removal or inadmissibility, if the applicant were denied admission into the United States, and [REDACTED] returned with her to Mexico. Presumably, [REDACTED] would not face difficulties adjusting to the language and culture in Mexico as the evidence indicates that: [REDACTED] is also a Mexican citizen, born and raised in Guadalajara; he met and married the applicant in Guadalajara; he and his wife have family in Guadalajara; and he lived, worked, and had a child in the Guadalajara area prior to 1995. Furthermore, the Department of State reports submitted by the applicant are general in nature and fail to establish that Mr. [REDACTED], or his family would face a specific or targeted criminal risk in Mexico. The record reflects further that [REDACTED] is an independent contractor and that he would not lose long-time employment status or employee benefits if he left his job and returned to Mexico. Moreover, the U.S. Ninth Circuit Court of Appeals held in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of extreme hardship.

Section 212(a)(9)(B)(v) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that her husband will suffer extreme hardship if she is denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the application denied.

ORDER: The appeal is dismissed. The application is denied.