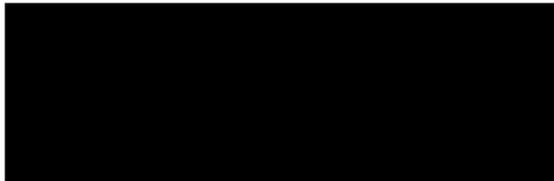


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U.S. Citizenship
and Immigration
Services

H3



FILE:



Office: CIUDAD JUAREZ, MEXICO

JUN 11 2007
Date:

(CDJ 2004 625 159 relates)

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:

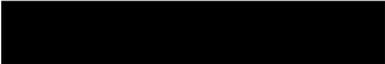


EXHIBIT TO COPY

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 waiver application was denied by the Officer in Charge (OIC), Ciudad Juarez, Mexico. The matter 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 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 her last departure from the United States. The record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 her husband and United States citizen child.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on her husband and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated February 6, 2006.

On appeal, the applicant, through counsel, contends that the OIC “failed to properly follow the standards set out in the statute and precedent immigration decisions in that he failed to consider the hardships in their totality and the cumulative effects of the hardships on the applicant’s qualifying relative.” *Brief attached to Form I-290B*, filed March 14, 2006. Counsel claims that “[r]eliance by the [OIC] in the allege [sic] immigration misconduct of the applicant is misplaced.” *Id.*

The record includes, but is not limited to, counsel’s brief, two affidavits from the applicant’s husband, a birth certificate for the applicant’s daughter, medical documentation regarding the applicant and her husband, and a psychological evaluation of the applicant’s husband. 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:

(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 AAO notes that the record contains several references to the hardship that the applicant's United States citizen child would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver, under section 212(a)(9)(B)(i)(II) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's husband.

In the present application, the record indicates that the applicant and [REDACTED] were married on December 28, 2000, in Jalisco, Mexico. The applicant entered the United States without inspection on or about January 22, 2001. On March 30, 2001, the applicant's husband became a naturalized United States citizen. On October 12, 2001, the applicant's daughter, Monserrat, was born, in Las Vegas, Nevada. On March 31, 2003, the applicant filed a Form I-130, which was approved on April 21, 2004. In April 2005, the applicant departed the United States. On May 2, 2005, the applicant filed a Form I-601. On February 6, 2006, the OIC denied the applicant's Form I-601, finding that the applicant accrued more than a year of unlawful presence and she failed to demonstrate extreme hardship to her United States citizen husband.

The applicant accrued unlawful presence from January 22, 2001, the date she entered the United States without inspection, until April 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her April 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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, 565-66 (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 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.

Counsel asserts that the applicant's spouse would face extreme hardship if the applicant's waiver is denied. *Brief attached to Form I-290B, supra*. The applicant's husband claims if the applicant is not allowed to return to the United States, "[their] family would be destroyed, [their] child will have to grow up without a family and [he] would be devastated if [their] family is separated." *Affidavit from [REDACTED]* dated October 27, 2005. The applicant's husband states that the separation is affecting him "emotionally...[and] mentally and economically." *Affidavit from [REDACTED]* dated April 5, 2005. [REDACTED] diagnosed the applicant with Major Affective Disorder. *Psychological Evaluation by [REDACTED]* page 6, dated February 22, 2006. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted psychological evaluation is based on one interview between the applicant's spouse and the psychologist. There was no evidence submitted establishing an ongoing relationship between [REDACTED] and the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on one interview, 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. The applicant submitted evidence establishing that her husband has pain in his knees and that he requested to have arthroscopy done on his knees. *Initial Orthopedic Consultation with [REDACTED]* page 6, dated, July 17, 2006. The AAO notes that the applicant's husband is working full-time, and [REDACTED] did not state that arthroscopy was medically necessary for the applicant to perform his job duties. Additionally, no documentation was submitted establishing that the applicant could not have the arthroscopy procedure performed in Mexico. The applicant's husband states his daughter is suffering extreme hardship because she "is losing the opportunity to start her education early and could end up losing grades." *Affidavit from [REDACTED]*, dated October 27, 2005. As noted above, the applicant's United States citizen daughter is not a qualifying relative for a waiver under section 212(a)(9)(B) of the Act. The applicant's husband states that the applicant has a medical condition "that needs special and continuous treatment." *Id*. However, hardship the applicant herself may experience as a result of her being inadmissible is irrelevant to a section 212(a)(9)(B) waiver. The applicant's husband states that he sends money to the applicant and his daughter to help support themselves. *Id*. The AAO notes that there was no evidence submitted that the applicant's husband could not obtain employment in Mexico. Additionally, the applicant's husband is a native of Mexico, who spent his formative years in Mexico, and speaks Spanish. See *Psychological Evaluation by [REDACTED]* *supra* at page 2 ("[REDACTED] speaks English with a 10% proficiency level."). The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he accompanied his wife in Mexico.

In addition, counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States, maintaining his employment. As a United States citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that no documentation was submitted to indicate that the applicant's spouse will experience financial hardship as a result of the separation from the applicant, and there is no evidence that the applicant has ever contributed financially to her husband. The applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). Further, the record fails to demonstrate

that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States court decisions have repeatedly 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, *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 *Hassan, supra*, the Ninth Circuit Court of Appeals held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for 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.