



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CIUDAD JUAREZ, MEXICO

Date:

MAY 23 2007

IN RE:

Applicant:



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:

SELF-REPRESENTED

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 Officer in Charge, Ciudad Juarez, Mexico. 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 officer in charge found that the applicant failed to establish that his wife would suffer extreme hardship if the applicant 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 that his wife and children will suffer extreme financial and emotional hardship if the applicant's Form I-601 application is denied.

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 reflects that the applicant entered the United States without admission in April 2002, and that he remained unlawfully in the United States until February 2005. The applicant married a U.S. citizen on October 19, 2002. The applicant's wife filed a Form I-130, Petition for Alien Relative on the applicant's behalf on January 24, 2003, and the Form I-130 was approved on July 11, 2003. The applicant departed the United States in February 2005. At that time, he was subject to section 212(a)(9)(B)(i)(II) of the Act unlawful presence inadmissibility provisions.

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 record reflects that the applicant is married to a U.S. citizen. The applicant's wife [REDACTED] is thus a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. It is noted that a U.S. citizen or lawful permanent resident child is not included as a qualifying relative for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant's children are thus not qualifying

relatives for section 212(a)(9)(B)(v) of the Act purposes. The hardship claims made with regard to the applicant's children shall therefore not be considered.

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

The applicant's statement on appeal, reflecting in pertinent part that he and his wife began living together in Mexico in 1996. The applicant indicates that his wife is a U.S. citizen and that at some point she moved to the United States with his son and stepdaughter. (The applicant's children were born in Mexico and became U.S. lawful permanent residents in March 2005.) The applicant indicates that he entered the United States illegally in April 2002, in order to join his family. He and his wife were legally married in the U.S. on October 19, 2002. The applicant indicates that he has been the main source of income for their family, and he states that his wife and family have suffered financial hardship since his departure from the United States. The applicant indicates that his family has also suffered emotional and psychological hardship as a result of their separation from him.

Two letters signed by [REDACTED] (dated February 25, 2005 and August 5, 2005), stating in pertinent part that [REDACTED] loves and misses her husband; that she needs his financial contributions to help pay for family expenses; that without her husband's financial help she has to work more, and sees her children less; and that her family would be unable to fulfill their dreams and plans if they moved back to Mexico.

An undated letter from [REDACTED] employer, Upper Crust Pizza, stating that [REDACTED] works approximately 35 hours per week and is paid \$8.35 per hour.

A June 1, 2005 pay stub reflecting that [REDACTED] received 106.75 hours in regular pay and 12.25 hours in overtime pay during a biweekly pay period.

A September 19, 2005, letter from [REDACTED] neighbor indicating that the applicant and her children miss their father.

It is noted that the record also contains two letters from the applicant's children's teachers indicating that the applicant's children miss their father. The letters lack probative value, as they do not relate to hardship that [REDACTED] would suffer if the applicant were denied admission into the United States.

The AAO finds that the cumulative evidence contained in the record fails to establish that [REDACTED] would suffer financial or emotional hardship that goes beyond that ordinarily associated with removal or inadmissibility, if she remained in the U.S. without the applicant. The evidence in the record fails to demonstrate that the applicant helps support [REDACTED] financially, and the record lacks evidence to corroborate the assertion that the applicant's absence has caused [REDACTED] extreme financial hardship. Moreover, the U.S. Supreme Court held 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, and the record contains no information or evidence to establish that [REDACTED] would suffer emotional or psychological hardship beyond that normally associated with removal, if the applicant's Form I-601 application were denied.

The applicant also failed to establish that [REDACTED] would suffer hardship beyond that normally experienced upon removal or inadmissibility, if the applicant were denied admission into the United States, and his wife moved with him to Mexico. Presumably, [REDACTED] would not face difficulties adjusting to a new culture in Mexico as she previously lived in Mexico with the applicant and her children. 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.

The AAO notes that a 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 his wife would suffer extreme hardship if he 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 his 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.