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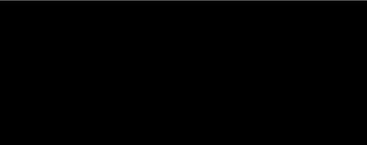
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SEP 17 2007

FILE:



Office: CIUDAD JUAREZ, MEXICO

Date:

(CDJ 2003 863 045 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:



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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Mexico, was found inadmissible to the United States under 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 is the spouse of a United States citizen and 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 return to the United States and rejoin his wife.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that his wife would suffer extreme hardship if she is required to remain in Mexico. The entire record was reviewed and considered in rendering 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.

Regarding the applicant's grounds of inadmissibility, the record reflects that he entered the United States, without inspection, in February 1996, and did not depart until March 2005. The applicant is now seeking admission within ten years of his March 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. The applicant does not contest the director's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

The record contains many references to the hardship that the applicant's United States citizen daughter will suffer if the applicant is refused admission into the United States. However, 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 his or her citizen or lawfully resident spouse or parent. Congress does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's wife is the only qualifying relative, and hardship that the applicant or the couple's daughter will face cannot be considered, except as it may affect the applicant's wife.

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 (9<sup>th</sup> 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 *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 alien 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. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The applicant's wife is a twenty-nine-year-old citizen of the United States (she is a citizen by birth). She and the applicant have been married since December 8, 2001 and have a four-year-old daughter, who is a

United States citizen. The applicant's wife also has a nine-year-old son from a previous relationship (the applicant is his stepson's father figure, as his biological father plays no role in his life).

The record contains two letters from the applicant's wife. In her first letter, dated September 12, 2005, she states that, due to her husband's inability to re-enter the United States she had had to leave their apartment and move into her parents' apartment; that she and the children no longer have health insurance, as it had been provided through the applicant's job; that she wants her daughter to be educated in her own country; that the applicant is her only support; and that they need a united and strong family.

The record also contains an undated letter from the applicant's wife, in which she states that she only earns \$230 per week; that her daughter does not eat well and needs vitamins, which she cannot afford to buy; that she wants her children to go to school in the United States; and asks CIS to please try and understand her situation.

On appeal, newly-retained counsel contends that the applicant's wife is experiencing horrific suffering and hardship as a result of the applicant's inadmissibility. In her July 31, 2006 evaluation, [REDACTED] a licensed clinical social worker and certified alcohol and other drug abuse counselor, states that the applicant's wife, daughter, and stepson are living with the applicant's wife's parents; that living conditions in the applicant's village, where he now lives, are primitive; that the applicant's wife does not feel safe in the applicant's village; that the applicant's daughter cries constantly and has become anemic because she refuses to eat; that the applicant's wife is concerned over how the applicant is managing, financially; that the applicant's stepson is very attached to the applicant; that the children are very close to their grandparents in Chicago; that the applicant's wife is having trouble with her memory and with concentrating due to stress; that the applicant's wife's stomach hurts; that she gets headaches every day; that her hair has been falling out; that her skin is dry and itchy; that she has white marks on her skin; that she has diminished appetite and has been losing weight; that she has trouble sleeping and has nightmares; that she was diagnosed with dysplasia, a pre-cancerous condition of the cervix, during her last pregnancy but does not have health insurance and therefore has not been receiving proper follow-up treatment; that she cannot stop worrying about developing cancer as a result of not being able to afford follow-up treatment; that she has no close family in Mexico; that she and the applicant are close; that she has had to pay for a babysitter for the first time since the children were born; that the children are close to the applicant; and that she is afraid the children will forget English if they return to Mexico. [REDACTED] stated that the applicant's wife and the children exhibit signs of dysthymia, a degree of depression. She also stated that the applicant's wife has excessive guilt; fatigue; feelings of confusion and helplessness; impaired memory and concentration; low energy; isolative behavior; bouts of crying; stomach pain; headaches; hair loss; itchy skin; white marks on skin; nail biting; lip biting; tooth sensitivity; teeth clenching; blurry vision; spots in her field of vision; red and tired eyes; cigarette cravings; hand shaking; feelings of falling; weakness; difficulty breathing; dizziness; hand swelling; chest pressure; lack of appetite; weight loss; and irritability. She states that the applicant's wife's dynamics and those of her children are interrelated and, therefore, it is impossible to view her situation in isolation from that of the children.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable

aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In the instant case, the applicant is required to demonstrate that his wife would face extreme hardship in the event the applicant is required to remain in Mexico, regardless of whether she joins him in Mexico or remains in the United States. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

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 wife will face extreme hardship if the applicant is refused admission. The record does not demonstrate that she faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to her situation, the financial strain of visiting the applicant in Mexico, the stress associated with maintaining two separate households, and the emotional and financial hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. Nor has the applicant's wife established extreme hardship due to medical conditions. Other than [REDACTED]'s letter, no evidence has been submitted to demonstrate that the applicant's wife faces stressors greater than that normally faced by persons in his situation. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on four interviews over a 12-day period. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife or any history of treatment for the anxiety and depression suffered by the applicant's wife. Moreover, the conclusions reached in the evaluation, which were based on four interviews over a 12-day period, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED]'s findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Nor has the applicant's wife submitted independent evidence, such as hospital records, to verify the claims made by [REDACTED] regarding the applicant's wife's medical concerns. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Nor has the applicant established that his wife would face extreme hardship if she joined him in Mexico, as the record fails to demonstrate that she would face hardship beyond that normally faced by others in her situation. Diminished standards of living, separation from family, and loss of language skills are to be expected in the applicant's wife's situation. The AAO also notes that the applicant's wife and stepson have both spent major parts of their lives in Mexico, thus diminishing the impact of returning.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 (9<sup>th</sup> Cir. 1991), *Perez v.*

*INS*, 96 F.3d 390 (9<sup>th</sup> 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 finds that the OIC properly denied this waiver application. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that the applicant’s wife would suffer hardship beyond that normally expected upon the inadmissibility of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his United States citizen wife would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. “Extreme hardship” has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director’s denial of the waiver application.

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