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U.S. Citizenship
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Date: **SEP 20 2007**

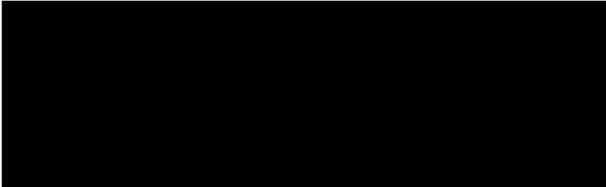
IN RE: Applicant:



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:



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 Acting District Director, Phoenix, Arizona, and 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 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. 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 be able to remain in the United States with his U.S. citizen spouse and children.

The acting 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 Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated November 9, 2005.

On November 23, 2005, counsel for the applicant filed the Form I-290B and provided a brief reason for the appeal on said form; counsel contends that Citizenship and Immigration Services (CIS) failed to properly consider and analyze the extreme hardship factors set forth in the applicant's case, as required by legal precedent decisions. Counsel also indicated on the Form I-290B that a brief and/or evidence in support of the appeal would be submitted to the AAO within 30 days. On July 10, 2007, the AAO sent a fax to counsel, stating that to date, the AAO had no record that any further evidence or brief was ever received, and requesting that counsel submit a copy of the brief and/or evidence to AAO, along with evidence that it was originally filed with the AAO within the 30 day period requested, within five business days. No information was sent by counsel in response to this fax and thus, the record is considered complete.

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 during the adjustment of status interview on May 27, 2004, the applicant provided sworn testimony admitting that he had first entered the United States in 1995, and remained in unlawful status until May of 1999, when he departed for Mexico. The applicant further stated that he remained in Mexico for two days and then reentered the United States using a Border Crossing Card. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until his departure in May 1999. As the applicant resided unlawfully in the United States for more than one year and sought admission within ten years, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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. 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).

This matter arises in the Phoenix district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

In support of the waiver, the applicant’s spouse asserts that she needs the applicant to remain in the United States. The applicant’s spouse states “...I just need to let you know that without my husband I wouldn’t know how I would make here in the U.S. He means so much to my life and the life of our children...I...have never been apart from him since we got together...I’ve been suffering of lately illnesses and I get very stressed out...” *Letter from* [REDACTED] Counsel has provided a letter from a social worker, [REDACTED] that states that the applicant’s spouse “...presents with...Major Depression...much anxiety related to husband possibly being deported...” *Letter from* [REDACTED] MSW, ACSW, CISW, dated April 25, 2005.

Counsel has not provided any medical documentation from a mental health professional describing in further detail the applicant’s spouse’s medical condition, its treatment and its impact on her ability to live productively, either in the United States or in Mexico. Although the input of any professional is respected and valuable, the record fails to reflect an ongoing relationship between a mental health professional and the applicant’s spouse or any history of treatment for the disorder referenced in the applicant’s spouse’s letter. Moreover, the conclusions reached by the social worker do not reflect the insight and elaboration commensurate with an established relationship, thereby rendering the social worker’s findings speculative and diminishing their value to a determination of extreme hardship.

In addition, the AAO notes that despite the medical condition referenced in the applicant’s spouse’s statement, the record indicates that she is able to maintain full-time employment; her medical condition clearly does not hinder her ability to work and assist in supporting her family. The AAO recognizes that the applicant’s spouse will endure hardship as a result of separation from the applicant. However, her situation, if the applicant remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

The applicant’s spouse also contends that were the applicant removed from the United States, she would lose the applicant’s financial support. The record indicates that the applicant has been employed since April 2004 as a Service Technician. Counsel has not provided any explanation for why the applicant would not be able to be employed in Mexico and assist in supporting the applicant’s spouse and their children in the United States. The AAO notes that counsel has provided a number of articles about the unemployment conditions in Mexico; however, this information is general in nature and does not specifically detail why the applicant, a service technician, would not be able to assume a similar position in his home country and assist with the costs of maintaining two households.

In addition, counsel contends that the applicant’s spouse would suffer extreme hardship as a result of relocating to Mexico to remain with the applicant. *Counsel’s Letter in Support of Waiver*, dated June 3, 2005. As stated by counsel, “[REDACTED] [the applicant’s spouse] indicates that he has decent employment and together they have purchased a home and have other assets that include two vehicles. Ms. [REDACTED] indicates that she has a very comfortable lifestyle.. [REDACTED] indicates in her affidavit that there are no family members in Mexico who could help them in Mexico and that she cannot find employment

there...Although she speaks Spanish, all of his [the applicant's] family members reside in the United States and she has no one to stay with if she had to depart to Mexico...In addition, there is substantial amount of crime, personal insecurity, and unemployment in Mexico. She fears for her life and the life of her children and husband because she is afraid that they might target of kidnapping..." *Id.* at 7-8. Counsel provides no evidence to substantiate that the applicant's spouse, a print shop technician, would not be able to assume a similar position, relatively comparable in pay and responsibilities, were she to relocate to Mexico, her birth country. Moreover, the security concerns relayed are general in nature and do not document a specific threat to the applicant's spouse.

Finally, counsel has provided an evaluation of the academic Spanish proficiency of the applicant's children. [REDACTED] the evaluator, concludes as follows: "...The [REDACTED] children are already showing signs of trauma and stress at simply the anticipation of their father's deportation. His actual deportation will provide long-term trauma, depression and academic hardship for them. Should they stay in the United States without him, they will suffer depression and anxiety caused by their separation from him. In addition, their grief will be intensified by their mother's grief and frustration, and she struggles to provide for them emotionally and financially. Should they accompany him to Mexico, the change in school systems, their limited Spanish, and changed economic situation will eliminate their opportunities to continue their studies and pursue their chosen professions. [REDACTED] will struggle significantly without adequate speech and language services..." *Evaluation of the Academic Spanish Proficiency of [REDACTED] and [REDACTED] U.S. Citizen Children of [REDACTED] and Their Ability to Function in a Spanish-Speaking School System.*

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. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant or his children cannot be considered, except as it may affect the applicant's spouse. Although the evaluation referenced above states that the applicant's children may suffer, both if the applicant remains or if he relocates to Mexico, it has not been established that the applicant's spouse, the qualifying relative in this situation, would suffer extreme hardship. While the applicant's spouse may need to make alternate arrangements with respect to the children's psychological, physical and scholastic care, it has not been shown that such arrangements would cause extreme hardship for the applicant's spouse.

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 will face extreme hardship if the applicant is removed from the United States. The record demonstrates that she faces no greater hardship 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 and emotional hardship she would face are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law.

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 (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).

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. 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) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.