

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

43



FILE:



CDJ 2004 635 121

Office: CIUDAD JUAREZ, MEXICO Date:

DEC 01 2008

IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in cursive script, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Ciudad Juarez, Mexico and the matter 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 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 ten years of her last departure from the United States. The applicant is the wife of a U.S. citizen and the mother of two U.S. citizen children. She seeks a waiver of inadmissibility under 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 family.

The officer in charge found that the record failed to establish that the applicant's spouse would suffer hardship beyond that normally experienced as a result of the removal of a family member. He denied the application accordingly. *Decision of the Officer in Charge*, dated January 30, 2006.

On appeal, the applicant's authorized representative contends that the adverse financial and familial consequences caused by the applicant's absence from the United States constitute extreme hardship for her husband, [REDACTED], the qualifying relative. *Form I-290B*, dated February 23, 2006; *Authorized Representative's Brief*, dated February 21, 2006.

Section 301(b) of the Illegal Immigration and Immigrant Responsibility Act of 1996 Pub.L. 104-208, amended section 212(a) of the Act to render inadmissible any alien who departs the United States after accruing unlawful presence. The unlawful presence provisions of the Act became effective as of April 1, 1997. As defined in section 212(a)(9)(B)(ii) of the Act, an alien is deemed to be unlawfully present in the United States if:

The alien is present in the United States after the expiration of the period of stay authorized by the Attorney General [now Secretary of Homeland Security] or is present in the United States without being admitted or paroled.

The record indicates that the applicant entered the United States without inspection in August 1999 and remained unlawfully in the United States until her voluntary departure to Mexico on May 9, 2005. On May 13, 2005, the applicant was interviewed by a Department of State consular officer at the U.S. Consulate in Ciudad Juarez regarding her application for an immigrant visa. The applicant is therefore inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present for more than one year and seeking admission to the United States within ten years of having departed the United States. She has filed the Form I-601, Application of Waiver of Grounds of Excludability, in order to obtain a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

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.

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 U.S. citizen or lawful permanent resident spouse and/or parent of the applicant. Hardship that the applicant or other family members experience as a result of separation is not considered in section 212(a)(9)(B)(v) waiver proceedings, except to the extent that it causes hardship to the applicant's spouse and/or parent. In the present case, the applicant's only qualifying relative is [REDACTED]

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 has held:

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. [*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted)].

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS, supra*, 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.

The AAO notes that, to establish extreme hardship, the applicant must demonstrate that her husband would suffer extreme hardship whether he relocates to Mexico to reside with her or remains in the United States without her. This is because [REDACTED] is not be required to reside outside the United States based on the denial of the applicant's waiver request.

The record of this proceeding includes the following documentation submitted to support the assertion of extreme hardship: (1) an undated statement by [REDACTED] (*Affidavit of [REDACTED]*); (2) an itemized list of the [REDACTED] family's monthly expenses in Texas, compiled by [REDACTED] on February 26, 2006; (3) a listing of the expenses incurred in Mexico by the applicant, by date and dollar amount, for the period May 19, 2005 through February 9, 2006; (3) a letter from [REDACTED] employer that addresses the terms of his employment (*Letter, Atlas Roofing Corporation*); (4) photographs of [REDACTED], his wife, and his children; (5) two sheets handwritten in Spanish (one signed by [REDACTED], and the other unsigned); and (6) Texas birth certificates for the two [REDACTED] children, showing their births as January 1, 2003 and September 23, 2004. The entire record has been reviewed and considered in reaching a decision in the applicant's appeal.¹

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to Mr. [REDACTED] in the event that he relocates to Mexico. Although [REDACTED] indicates that he does not want to live in Mexico, the present application and supporting submissions do not address how [REDACTED] relocating to Mexico would result in extreme hardship to him. Accordingly, the applicant has not established that extreme hardship would befall [REDACTED] if he joined the applicant in Mexico.

The second part of the extreme hardship analysis requires the applicant to establish that [REDACTED] would suffer extreme hardship if he remains in the United States. On appeal, counsel asserts that [REDACTED] is experiencing financial hardship as a result of his separation from the applicant. He contends that [REDACTED] is required to maintain two households and to pay for his family's healthcare as his health insurance does not cover his family in Mexico. Counsel states that, over the ten-year period that the applicant must reside outside the United States, [REDACTED] will spend \$169,020 to maintain his own household and \$74,960 to care for the applicant and their two children in Mexico. Counsel also asserts that the [REDACTED] family is very close and that most family members reside in the United States. He states that the separation from his wife has resulted in Mr. [REDACTED] traveling frequently to Mexico at a high cost in order to maintain contact with his family. Absent approval of the applicant's waiver, counsel states, [REDACTED] financial burden would be tremendously augmented.

In his statement, [REDACTED] attests that his wife's exclusion from the United States and the resultant separation from her and his children are causing him stress and emotional strain that he will not be able to bear for the years

¹ The two sheets handwritten in Spanish were not considered by the AAO because they are not accompanied by a certified translation. The regulation at 8 C.F.R. § 103.2(b)(3) states that any submitted document containing foreign language "shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

of her inadmissibility. He also alludes to financial pressures generated by traveling to visit his wife and children, keeping in contact with them by telephone, and paying his family's expenses in Mexico while also maintaining a house in the United States. [REDACTED] states in pertinent part:

I do not know what else to do. I miss my family very much and I have been spending a lot of money by calling them and also sending them money so that they can live. Things are not the same in Mexico as in the United States.

I have a house for them here and insurance but I have to pay for everything for them in Mexico. I paid over \$2600.00 since they went to travel to go see them and it takes many hours to get there and then I have to come back to go to work so that I can send them more money.

My wife is a good person and is not a criminal and she takes good care of my kids. If she came back then I can find her a job and she can also help me pay our bills. This is what we wanted. Now I have to pay my bills and the bills in Mexico.

I cannot stay separated from my family for 10 years. . . . I do not think that [my wife] deserves to be out for 10 years because it will be hard for me since I have a job here for many years and I do not want to live in Mexico. That is the reason I became a citizen so I can live in America.

The AAO notes that the record lacks documentary evidence to support the accuracy of the two lists of expenses incurred by the [REDACTED] family. Therefore, the lists are of little evidentiary weight. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). Moreover, the record lacks evidence to demonstrate that the applicant is unable to obtain employment in Mexico that would alleviate some of the financial burden on Mr. [REDACTED].

The AAO has considered, both individually and in the aggregate, all of the hardship factors identified in the present application, including the extent to which the evidence of record has demonstrated stress, emotional strain, and financial pressure experienced by [REDACTED] due to his wife's absence. The AAO finds, however, that the record, when reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] would face extreme hardship if the applicant's waiver application were to be denied. Rather, the record demonstrates that [REDACTED] would experience the distress and upheaval routinely created by the enforced absence of a spouse due to her inadmissibility. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. Accordingly, the applicant has not established that [REDACTED] would suffer extreme hardship if he remains in the United States while she lives outside the United States as a consequence of her inadmissibility.

As the evidence has not established that the qualifying relative would face extreme hardship if the waiver request were denied and the applicant remained outside the United States, the applicant has failed to establish statutory eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. As the applicant is 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(i) 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.