



U.S. Citizenship
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FILE: [REDACTED]
(CDJ 2004 715 430 relates)

Office: CIUDAD JUAREZ, MEXICO

Date: JUL 26 2007

IN RE: [REDACTED]

PETITION: 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 PETITIONER:

SELF-REPRESENTED

PUBLIC 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 join his wife and family.

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 he 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 June 2000, and did not depart until July 2005. The applicant is now seeking admission within ten years of his July 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 children 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 specifically 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 to the applicant or the couple's children 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 (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 *Perez v. INS*, 96 F.3d 390 (9th 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.

If 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 record reflects that the applicant's wife is a twenty-year-old citizen of the United States; she has been a citizen since February 27, 2001. She and the applicant have been married since June 14, 2003 and have two children together.

The record contains four letters from the applicant's wife. In her first letter, dated July 14, 2005, she states that she and her children will experience extreme hardship if the waiver is denied; that the family will experience financial hardship as she was not working at the time the letter was written; that she does not know how to drive and that the applicant drives her to her medical appointments; that she will not be able to afford diapers and formula if the applicant is in Mexico; and that she will be unable to educate the children and give them the things they need if the applicant is required to remain in Mexico.

In her second letter, dated November 16, 2005, the applicant's wife states that her daughter cries out for the applicant; that she is only earning eight dollars per hour at her current job; that she cannot pay for rent, bills, and her children's needs; and that things have been hard without the applicant.

In her third letter, dated January 12, 2006, the applicant's wife states that she has struggled to keep the family together in the applicant's absence; that the family has been torn apart in the applicant's absence; that her oldest daughter has a heart murmur; that she cannot live normally without the applicant; that the applicant is the only man she can trust and rely upon; that separation from the applicant is causing too much pain for the children; that she has had to move to her mother-in-law's home because she could not pay for rent and feels she is a burden; that she works hard but cannot find peace without the applicant's presence; that she has trouble paying her bills; and asks that the family be permitted to reunite.

In her fourth letter, dated June 5, 2006, the applicant's wife states that the OIC's denial of the waiver application was cruel and without consideration to the family; that denial of the waiver application was a shock to the family; that she is dumbfounded by the OIC's denial; that the applicant was admitted to a hospital in Mexico on February 12, 2006 following a seizure; that the applicant did not tell her about the incident initially, as he was trying to protect her; that the applicant's doctor in Mexico mentioned that stress and other factors cause epileptic seizures in young men; that she is concerned about the applicant's health; and that she does not understand what made the OIC deny the waiver application, as there is so much hardship present.

The record also contains information regarding the couple's United States citizen's daughter's medical condition. According to this documentation, the couple's daughter has a heart murmur, but that she has normal cardiac anatomy and function, and that no cardiology follow-up or restrictions on her activity are necessary.

The record also contains information regarding the applicant's visit to a Mexican hospital on February 16, 2006 after his seizure, as well as a letter from a doctor in Mexico stating that the couple's daughter had suffered a "severe seizure due to a murmur."

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."); *Shoostary 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).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. “Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare.” *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) (“Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the “economic” character of the hardship makes it no less severe.”)

The Ninth Circuit Court of Appeals has also stated that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also that, “[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). The AAO notes that this matter arises in Nevada, which is within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given appropriate weight in the assessment of hardship factors in this case.

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 specifically 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 established that she would face extreme hardship if she joined the applicant in Mexico, as the record fails to demonstrate that she would face hardship beyond that normally faced by others in his situation if he were to relocate with the applicant. The record contains no evidence, and the applicant’s wife has not stated, that she would face extreme hardship if she were to relocate to Mexico.

The record contains information regarding the medical conditions of the applicant and the applicant’s daughter. As noted previously, hardship to the applicant or the couple’s children is not a permissible consideration under the statute. 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 specifically did not mention extreme

hardship to a United States citizen or lawful permanent resident child. The applicant's wife is the only qualifying relative in this case.¹

Finally, as required by the Ninth Circuit, the AAO has weighed the effect of the applicant's wife's separation from her husband. However, the AAO has determined that she would not face hardship in this regard greater than that normally expected by those facing the removal or deportation of a spouse. Nor has the applicant's wife established why the separation cannot be ended with her relocation to Mexico.

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). 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 will suffer hardship beyond that normally expected upon the removal or refusal of entry 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 will suffer hardship that is unusual or beyond that normally expected upon 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 removal or 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.

¹ Moreover, the AAO notes that the evaluation of the couple's daughter's medical condition, which was prepared by the Children's Heart Center in Reno, Nevada, on January 10, 2006, stated that she has normal cardiac anatomy and function, and that no cardiology follow-up or restrictions on her activity were necessary. On appeal, the applicant has submitted a May 26, 2006 letter from a doctor in Mexico stating that the couple's daughter suffered "a severe seizure due to a murmur." There is no evidence regarding this incident beyond the Mexican doctor's three-sentence letter. There is no evidence that this "severe seizure" required medical follow-up or medication, and there is no follow-up information from her pediatrician in Nevada regarding this incident.