



U.S. Citizenship
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JUN 12 2007

FILE:



Office: CIUDAD JUAREZ, MEXICO

Date:

(CDJ 2004 648 164 relates)

IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under §§ 212(a)(9)(B)(ii) and 212(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(ii) and 212(a)(1)(A)(iii)

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 waiver 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.

The applicant is a native and citizen of Mexico who is married to a citizen of the United States and is the beneficiary of an approved petition for alien relative. The applicant was found to be inadmissible to the United States pursuant to § 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 his last departure from the United States. He was also found inadmissible pursuant to § 212(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 212(a)(1)(A)(iii), for having a physical or mental disorder (alcohol abuse) with potentially harmful associated behavior.

The applicant applied for a waiver of inadmissibility in order to reside in the United States with his wife and stepchildren. However, the officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse, as required by § 212(a)(9)(B) of the Act. The officer in charge also denied the waiver under section 212(g)(3) of the Act as a matter of discretion. The application was denied accordingly. On appeal, the applicant asserts that the officer in charge did not fully consider all the hardship factors presented. The applicant claims that his spouse is experiencing extreme emotional and financial harm due to their separation, and that she would also experience extreme hardship if she relocated to Mexico to live with the applicant. The applicant also asserts that he does not suffer from any physical or mental disorder.

On appeal, the applicant submits letters written by himself and his wife, documents from rehabilitation programs the applicant attended, and a letter and drug test results provided by Dr. [REDACTED] a psychiatrist. The AAO has reviewed the entire body of evidence and concurs with the decision of the officer in charge.

The applicant's unlawful presence will be addressed first. 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.

The record reflects that the applicant entered the United States without admission sometime in January 1999 and remained unlawfully until his departure in February 2005. The applicant, who is the beneficiary of an approved Petition for Alien Relative, is seeking admission within ten years of his February 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under § 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A § 212(a)(9)(B)(v) waiver of the bar to admission resulting from § 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 lawfully resident spouse or parent of the applicant. Hardship the alien himself or his children experience upon deportation is irrelevant to § 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act. These 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.

On appeal, the applicant's wife asserts that she now experiences and will continue to face extreme hardship due to the applicant's absence. In her letter of October 10, 2005, the applicant's wife asserts that she sold her vehicle in order to visit the applicant in Mexico for a week. She explains further that although the applicant moved to Tijuana to be near the U.S. border, and she visits him whenever possible, she still suffers greatly due to his absence. The applicant's wife writes on appeal that she suffers from mental anguish and severe depression. She also states that her children suffer emotionally, because they grew close to the applicant.

The AAO acknowledges the applicant's wife's emotional distress; however, her experience is common to many spouses of inadmissible aliens. The evidence does not establish that the applicant's wife's suffering goes beyond that which is usually presented in similar cases. In addition, as noted above, the applicant's children's suffering is not under consideration in this waiver application except insofar as it causes the applicant's spouse to suffer extreme hardship.

The applicant's wife maintains that she could not move to Mexico to live with the applicant, as she would have to commute daily over the border in order to maintain her employment in the United States. She notes that this would be difficult, because she sold her vehicle. The record does not establish that the applicant and his wife would be unable to purchase another car, or that the applicant and his wife are unable to find employment in Mexico. The record does not establish that the applicant's wife would suffer extreme hardship should she relocate to Mexico.

U.S. 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). 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), defined extreme hardship as hardship that exceeds 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. It is also noted that the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The AAO recognizes that the applicant's wife's lifestyle is complicated as a result of separation from the applicant. However, her situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. As the applicant failed to establish that his wife will experience extreme hardship on account of his inadmissibility, there is also no reason to analyze any discretionary factors presented in relation to the waiver under section 212(g).

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.