

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H4



FILE:



Office: CIUDAD JUAREZ, MX

Date: JUN 19 2007

(CDJ 2004 617 205 RELATES)

IN RE:

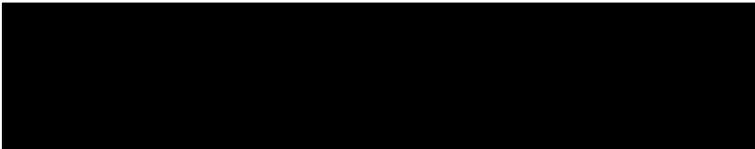
Applicant:



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 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 and the application denied.

The applicant is a native and citizen of Mexico. The applicant 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. The applicant presently seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director determined the applicant had failed to establish that her husband would suffer extreme hardship if she were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 Application) was denied accordingly.

On appeal the applicant indicates, through counsel, that the hardship factors in the present matter establish that her husband would suffer extreme hardship if her Form I-601 application is denied.

Section 212(a)(9)(B)(i) of the Act provides, in pertinent part, that:

[A]ny 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.

The record reflects that the applicant entered the United States without admission on an unknown date in May 2002, and that she married her husband in Texas on May 20, 2002. The applicant remained unlawfully in the United States until March 2005. Because the applicant was unlawfully present in the United States for more than one year between May 2002 and March 2005, she is subject to section 212(a)(9)(B)(i)(II) of the Act unlawful presence inadmissibility provisions.

Section 212(a)(9)(B)(v) of the Act provides that:

[T]he Attorney General [now Secretary, Department 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 applicant is married to a naturalized U.S. citizen. The applicant's husband is thus a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship waiver purposes.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) deemed the following factors to be relevant in determining extreme hardship to a qualifying relative:

[T]he 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.

The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996). Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. See *Perez v. INS*, *supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The record contains the following evidence relating to the applicant's husband's [REDACTED] extreme hardship claim:

A letter written by [REDACTED] stating in pertinent part that: he became a naturalized U.S. citizen in 1997; he has lived in Navasota, Texas since 1995, and owns a house there; he has worked at the [REDACTED] chicken-processing factory as a cutting crew member since 1999; he suffers from diabetes and his health has deteriorated since his wife's departure from the United States. [REDACTED] states that his workdays and weeks are long, and that without his wife's help he is too tired to maintain his household or to maintain a proper diet to control his diabetes.

An August 18, 2005 letter from [REDACTED] stating that [REDACTED] "is a known diabetic the last 2 ½ years." The letter states that: [REDACTED] blood sugar is out of control; [REDACTED] has been unable to manage his diabetic care for the last two years due to lack of time and companionship; and [REDACTED] requires family support from his wife to gain better control of his medical condition.

A copy of a medical prescription reflecting that [REDACTED] takes one tablet of Metaglip 2.5-500M every morning.

An August 9, 2005 letter from [REDACTED] reflecting that [REDACTED] has been employed at the factory fulltime since June 17, 1999, and that he earns \$9.70/hour as a cutting crew member.

Copies of [REDACTED] monthly utility expenses.

Upon review of the totality of the evidence, the AAO finds that the applicant has failed to establish that her husband would suffer hardship that goes beyond that ordinarily associated with removal or inadmissibility, if

he remains in the U.S. without the applicant. The evidence in the record fails to demonstrate that the [REDACTED] [REDACTED] relies on the applicant financially, and the record lacks evidence to indicate that the applicant's absence would cause [REDACTED] extreme financial hardship. Moreover, the AAO notes the U.S. Supreme Court holding in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." The applicant also failed to present evidence establishing that [REDACTED] would suffer extreme emotional hardship if the applicant were denied admission into the United States. Moreover, the medical evidence contained in the record fails to establish that the applicant's presence in the United States would lead to an improvement in [REDACTED] present medical condition. The August 18, 2005 medical letter submitted by the applicant indicates that [REDACTED] has been unable to control his diabetic care for the last two years due to lack of time and companionship. It is noted, however that the record clearly reflects that the applicant was married to [REDACTED] and with him in the United States from May 2002 to March 2005. The applicant was thus living with [REDACTED] during the majority of the two-year period in which his diabetic condition became uncontrolled. The medical evidence therefore fails to establish that [REDACTED] would suffer medical hardship beyond that normally associated with removal or inadmissibility, if the applicant's Form I-601 application were denied.

The applicant also failed to establish that her husband would suffer hardship beyond that normally experienced upon removal or inadmissibility, if the applicant were denied admission into the United States and [REDACTED] returned with her to Mexico. The evidence in the record does not address any hardship factors [REDACTED] would suffer if he moved to Mexico, and the Board held in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. The record indicates further that [REDACTED] was born and raised in Mexico, and the AAO notes that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, has not been found to rise to the level of extreme hardship. See *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986.)

Section 212(a)(9)(B)(v) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that her husband will suffer extreme hardship if she is denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the application denied.

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