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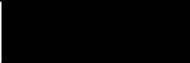
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FILE:



Office: PHOENIX, AZ

Date: JUL 15 2008

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 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. The record reflects that the applicant initially entered the United States in 1994 using a valid Border Crossing Card and remained beyond the period of authorized stay. She departed the United States in September 2002 and subsequently re-entered two days later. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until September 30, 2002, when she departed the United States. The applicant was thus 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 seeks a waiver of inadmissibility in order to remain with her lawful permanent resident spouse and children in the United States.

The 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 District Director*, dated March 23, 2006.

In support of the appeal, counsel provided a clinical assessment from [REDACTED], MA, LISAC, dated April 15, 2006, with respect to the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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

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 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.

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 and/or her children cannot be considered, except as it may affect the applicant’s spouse.

The applicant’s spouse first contends that he will suffer emotional and psychological hardship due to the applicant’s inadmissibility. As stated by the applicant’s spouse,

...If we remained in the United States by ourselves...We would be forced to experience exceptional and unusual extreme hardship....

Further we would suffer emotional distress and trauma, especially our children, if we had to remain in the U.S. by ourselves, because we would not have the psychological and emotional well being that my wife's [the applicant's] presence and psychological nourishment provides....

*Affidavit of* [REDACTED]

To support the assertion that the applicant's spouse will suffer emotional and psychological hardships if applicant is removed from the United States, counsel provides a clinical assessment. As stated by [REDACTED], MA, LISAC,

...On April 8, 2006, [REDACTED] [the applicant's spouse] was seen for a clinical assessment for immigration purposes....

[REDACTED] feels a sense of powerless over his wife's INS matter. He feels helpless and is often totally overwhelmed and at a loss as to what to do. [REDACTED] is having difficulty falling asleep and staying asleep. When he is able to fall asleep he has nightmares. Upon awakening from a nightmare his heart is racing, he is experiencing chest pains, his breathing is labored and he is perspiring heavily....

[REDACTED] is an alcoholic....

...he is afraid that he will start drinking heavily due to the tremendous amount of pressure that he is under stemming from his wife's dilemma with the INS.

Sixteen year old [REDACTED] [the applicant's child] has a serious problem with anger. The family constantly walks on eggshells because anything can set him off at any time....

To date, the teen's anger has been directed towards his family. However his father [the applicant's spouse] believes that it is only a matter of time before [REDACTED]'s anger and unruly behavior begin to get him into trouble at school and in their community....

Should [REDACTED] [the applicant] be deported her husband will struggle with feelings of grief, disbelief, fear, anger and resentment. He may begin to experience panic attacks and return to the only coping mechanism he knows; alcohol.

It will be very difficult for [REDACTED] to work, run the household and take over all of the duties that his wife currently handles....

Mr. and Mrs. [REDACTED] have been having trouble controlling their teenage son, [REDACTED]. The possibility exists that with the teen's mother out of the picture, Augustine may be unable to control the teen alone. [REDACTED]'s rebellious and unproductive behavior will serve to exacerbate [REDACTED]'s depression and anxiety. This in turn, may cause [REDACTED] to plunge into full blown alcoholism.

*Clinical Assessment prepared by [REDACTED], MA, LISAC, dated April 15, 2006.*

Although the input of any professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and [REDACTED]. 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 conditions referenced in [REDACTED]'s evaluation. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED]'s findings speculative and diminishing the evaluation's value to a determination of extreme hardship. In addition, the record indicates that the applicant's spouse is gainfully employed; the health concerns raised by [REDACTED] clearly have not impeded the applicant's spouse's ability to work and maintain the household. Finally, the applicant has failed to document that the applicant's spouse would be unable to visit the applicant on a regular basis, considering the close proximity between Mexico and Arizona. While the applicant's spouse may need to make alternate arrangements with respect to the maintenance of the household and the children's continued care, it has not been shown that such arrangements would cause extreme hardship for the applicant's spouse.

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of 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 current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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).

The applicant’s spouse further asserts that he will suffer extreme financial hardship due to the applicant’s absence. As stated by the applicant’s spouse,

...we would be homeless in that I would not be able to pay the home mortgage by myself and/or otherwise provide our children the basic necessities of life....

*Supra* at 2

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.”).

In this case, no financial documentation has been provided to establish the applicant’s and her family’s current economic situation, to corroborate that the applicant’s spouse will suffer extreme financial hardship due to the applicant’s inadmissibility. Moreover, no evidence has been provided to substantiate that the applicant is unable to obtain gainful employment in Mexico, thereby providing her with the ability to assist her spouse with respect to the household costs while he remains in the United States. Finally, the record indicates that the applicant’s children are now 23 and 18 years old; it has not been established that they are unable to support themselves and/or obtain employment to assist with the household expenses, thereby reducing the hardship to the applicant’s spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). While the applicant’s spouse may need to make adjustments with respect to the family’s financial situation while the applicant resides abroad due to her inadmissibility, it has not been shown that such adjustments would cause the applicant’s spouse extreme hardship.

The AAO recognizes that the applicant’s spouse will endure hardship as a result of separation from the applicant. However, his situation, if he 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 AAO concludes that based on the evidence provided, it has not established that the applicant’s spouse will suffer extreme emotional, psychological and/or financial hardship due to the applicant’s absence.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant’s waiver request. In this case, the applicant’s spouse states as follows regarding the hardships he would encounter were he to relocate to Mexico:

...All of my family, and extended family are in the United States...

I do not have any one in Mexico, nor would I be able to obtain financial assistance from any family members should I have to accompany my wife [the applicant] to Mexico....

In Mexico we would not have food, clothing, shelter or medical care....

...I would not be able to find employment.

...We would not be able to survive financially....

*Supra* at 1

To support the applicant's spouse's contentions, counsel has provided articles about country conditions in Mexico. The information provided by counsel is general in nature and does not document that the applicant's spouse will suffer extreme hardship were he to relocate to Mexico. Moreover, it has not been established that the applicant and/or her spouse, both nationals of Mexico, would be unable to obtain gainful employment with adequate medical coverage in Mexico. Finally, the applicant's spouse references the hardships he will face due to the fact that his children will suffer were they to relocate to Mexico. As noted previously, the applicant's children are both over 18 years of age; it has not been established that they would not be able to remain in the United States yet visit their parents in Mexico regularly, nor has it been established that the applicant's spouse would be unable to visit his children in the United States on a regular basis, based on his status as a lawful permanent resident.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her lawful permanent resident spouse would suffer extreme hardship if she were not permitted to remain in the United States, and moreover, the applicant has failed to show that her lawful permanent resident spouse would suffer extreme hardship were he to relocate to Mexico to accompany the applicant. The record demonstrates that the applicant's spouse 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. 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. The waiver application is denied.