



**U.S. Citizenship
and Immigration
Services**

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FILE:

[REDACTED] CDJ 2004 779 426

Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date:

DEC 03 2009

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Ground 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:

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.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 34-year-old 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. The applicant is married to a citizen of the United States, and he 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 with his wife in the United States.

The District Director found that the applicant failed to establish extreme hardship to his spouse, and denied the application accordingly. *Decision of the District Director*, dated August 15, 2006.¹ On appeal, the applicant's wife, [REDACTED] contends that the denial of the waiver imposes extreme hardship on her and her children. *See Form I-290B, Notice of Appeal*, received October 5, 2006.

The record contains, among other things, a copy of the couple's marriage certificate; several letters from the applicant's wife discussing the hardships imposed on her as a result of family separation; financial documents; and medical records for the applicant's wife. The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(9) 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

¹ The record contains evidence that the decision of the District Director was mailed on September 14, 2006.

admitted for permanent residence, if it is established to the satisfaction of the [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 shows that the applicant entered the United States without being inspected and admitted in or around June, 1997. *See Form I-601, Application for Waiver of Ground of Excludability; Decision of the District Director, supra* at 2. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on August 9, 2004, and U.S. Citizenship and Immigration Services approved the petition on August 31, 2004. *See Form I-130, Petition for Alien Relative.* The applicant departed the United States in October, 2005. *See Form I-601, supra.* The applicant's unlawful presence for one year or more after April 1, 1997, and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman, 23 I&N Dec. 905, 909 (BIA 2006).*²

In order to obtain a section 212(a)(9)(B)(v) waiver for unlawful presence, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See 8 U.S.C. § 1182(a)(9)(B)(v).* Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector, 479 U.S. 85, 88 (1986).* Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc)* (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).*

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez, 22 I&N Dec. at 565.* In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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 565-66.* Family separation is also an important calculation in the extreme hardship

² The District Director erred in characterizing the ground of inadmissibility in section 212(a)(9)(B)(i)(II) of the Act as a "permanent bar to admission." *See Decision of the District Director, supra* at 3. Rather, departure after unlawful presence of one year or more triggers a ten-year bar to admission. *See 8 U.S.C. § 1182(a)(9)(B)(i)(II).*

analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *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 mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse is a 48-year-old native of Mexico and citizen of the United States. *See Certificate of Naturalization for [REDACTED]* dated Feb. 6, 2004. The applicant and his wife have been married for five years. *See Marriage Certificate* (indicating marriage on July 23, 2004, in Arizona). It appears that [REDACTED] has children from a previous marriage. *See Letter of [REDACTED] in Support of Appeal* (referring to her children and grandchildren).

The applicant’s spouse asserts that she is suffering extreme emotional, financial, and medical hardships as a result of the separation from her husband. Specifically, [REDACTED] states that she met the applicant in 1999, and that they began living together in 2000. *Id.* They “grew fond of each other through the years that passed by, shar[ing] many interests and home expenses.” *Id.* [REDACTED] also notes that they “have no reason to stop loving each other and shar[ing] tender moments with [her] children and grandchildren who love [REDACTED] so dearly.” *Id.* Regarding financial hardship, [REDACTED] claims that the applicant was supporting the family economically, and he

brought home food from the restaurant where he worked. *Id.*; see also Letter from [REDACTED] in Support of Wavier. [REDACTED] claims monthly expenses in the amount of \$946.40, and she notes that they were able to “get buy [sic] on [their] small salaries” without relying on family members or food stamps. Letters from [REDACTED] Financial Documents. Further, the applicant’s wife claims that she is only able to work on a part-time basis due to lower back pain. See Letter of [REDACTED] in Support of Appeal; Letter from First Chiropractic. The record also indicates that [REDACTED] has been diagnosed with a possible intrauterine cyst, and that she suffers from lower quadrant pain and dyspareunia. Radiology Report; Letter from First Chiropractic; see also Cytology Report (noting abnormal Pap).

Although the record shows that separation from the applicant has caused various hardships to the applicant’s wife, the evidence in the record is not sufficient to demonstrate that the hardship is extreme. First, regarding the emotional hardships of separation, [REDACTED] did not provide medical records, probative testimony, or other evidence to show that the psychological hardships that she faces are unusual or beyond what would be expected upon family separation due to one member’s inadmissibility. Second, although [REDACTED] has documented a number of medical conditions, the evidence in the record does not indicate that these conditions are particularly severe, that prolonged treatment is necessary, or that her prognosis is guarded. Accordingly, the evidence does not support a finding that [REDACTED] suffers from severe medical hardships as a result of the separation from the applicant. Third, the record indicates that [REDACTED] limited income is just sufficient to cover the monthly living expenses claimed on appeal. See Earnings Statements for [REDACTED] (showing average bi-weekly income of \$495). Additionally, it appears that the applicant’s limited income in Mexico is sufficient to cover his living expenses there. See Earnings Statements and Rent Receipts for [REDACTED]. Although the lack of a dual income may present financial difficulties, the evidence in the record is insufficient to show that the applicant’s inadmissibility causes extreme financial hardship to the applicant’s wife. Finally, the applicant’s wife has not presented any evidence, such as detailed testimony or documentation regarding conditions in Mexico or other evidence, to support a claim that relocation to Mexico would cause extreme hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66 (setting forth relevant factors, including 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).

In sum, although the applicant’s spouse claims hardships based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. See *Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one’s family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. See *id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required under section 212(a)(9)(B)(v) of the Act.

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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.