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FILE:  Office: MEXICO CITY (CIUDAD JUAREZ)
CDJ 2004 838 190 (relates)

Date:

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.

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 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 and seeking readmission within 10 years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 reside in the United States with his United States citizen wife and child.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 14, 2006.

On appeal, the applicant, through counsel, claims that the applicant's "United States Citizen wife suffers from serious psychological problems that will result in extreme hardship." *Appeal Brief*, page 1, dated December 12, 2006.

The record includes, but is not limited to, counsel's appeal brief, a declaration from the applicant's wife, and a psychological evaluation from _____ The entire record was reviewed and considered in arriving at 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 [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 AAO notes that the record contains several references to the hardship that the applicant's daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's wife.

In the present application, the record indicates that the applicant initially entered the United States in May 2000 without inspection. On August 20, 2004, the applicant's lawful permanent resident wife filed a Form I-130 on behalf of the applicant. On October 20, 2004, the applicant's wife became a United States citizen. On November 29, 2004, the applicant's Form I-130 was approved. In December 2005, the applicant departed the United States. On December 8, 2005, the applicant filed a Form I-601. On November 14, 2006, the District Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant accrued unlawful presence from May 2000, the date the applicant entered the United States without inspection, until December 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his December 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel states that the applicant and his wife “have [a] very close and loving relationship[p] and an eighteen-month-old daughter, but this family now faces complete destruction due to separation.” *Appeal Brief, supra* at 5. In a declaration dated December 6, 2006, the applicant’s wife states “[t]he separation from [the applicant] has caused [her] to suffer extreme emotional hardship and depression.” In a psychological evaluation dated November 29, 2006, [REDACTED] diagnosed the applicant’s wife with moderately severe Adjustment Disorder with both anxiety and depression. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment is based on one interview between the applicant’s wife and a psychologist. There was no evidence submitted establishing an ongoing relationship between the psychologist and the applicant’s wife. Moreover, the conclusions reached in the submitted assessment, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologist’s findings speculative and diminishing the assessment’s value to a determination of extreme hardship. The applicant’s wife states she is “very worried about [the applicant]. He is very nervous and tense.” Counsel states that “as a result of [the applicant’s] prolonged separation from his family, he developed Bell’s Palsy and undergoes therapy to help his facial paralysis.” *Appeal Brief, supra* at 4. The AAO notes that it appears that the applicant is receiving treatment for his medical condition in Mexico. Additionally, as noted above, hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. The applicant’s wife states “[t]he tension in [their] lives is also affecting [their] 18 month old daughter.... [Her] daughter is frequently suffering from vomiting and fevers.” The AAO notes that the applicant’s daughter may be suffering from some medical conditions; however, there was no documentation submitted establishing that the applicant’s daughter could not receive treatment for her medical conditions in Mexico. Additionally, the AAO notes that the applicant’s daughter may experience hardship in relocating to Mexico; however, she is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act.

The applicant’s wife states she “will not be able to make it financially. [She] only work[s] part time so that [she] can attend school.” Counsel states that when the applicant was in the United States, his wife attended college full-time, but since his departure from the United States, his wife “has attended college part-time only to allow herself to work part-time.” *Appeal Brief, supra* at 3. The AAO notes that even though the applicant’s wife has not completed college, the applicant has not established that his wife has no transferable skills that would aid her in obtaining a job in Mexico, or that she cannot complete her schooling in Mexico. Additionally, the AAO notes that the applicant’s wife is a native of Mexico who speaks Spanish, she spent her formative years in Mexico, and it has not been established that she has no family ties in Mexico. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined him in Mexico.

In addition, counsel does not establish extreme hardship to the applicant’s wife if she remains in the United States. As a United States citizen, the applicant’s wife is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. The applicant’s wife states that “[w]hen [the applicant] was living with [them], [she] was attending Cal. State San Bernardino full time.” The AAO notes that beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be unable to contribute to his wife’s financial wellbeing from

a location outside of the United States. Moreover, the United States 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).

United States 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 Board 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), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

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. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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