

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

OCT 01 2009

FILE:

CDJ 2004 782 139

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

IN RE:

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:

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant, [REDACTED], is a native and citizen of Mexico. She 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 admission within 10 years of her last departure from the United States. 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 return to the United States to join her naturalized U.S. citizen husband, [REDACTED].

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, the applicant's spouse asserts that he and the applicant are expecting a baby. He states that because of the applicant's medical condition, she is not strong enough to take care of their baby by themselves. He states that he has been taking time off from work to visit the applicant in Mexico. In support of the application, the record contains, but is not limited to, a letter from the applicant's spouse, medical documentation, a medical billing statement, and photographs.¹ The entire record was reviewed and considered in rendering this decision.

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

(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

¹ The record contains a number of medical reports written in Spanish without corresponding English translations. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

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 record shows that the applicant entered the United States without inspection in May 2003. The applicant remained in the United States until departing in November 2005. The director found that the applicant accrued unlawful presence from May 2003 until November 2005. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of her November 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 having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of her last departure.

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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 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).

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 (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States 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.

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the

applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The applicant's spouse asserts that he and the applicant are expecting a baby. He states that because of the applicant's medical condition, she is not strong enough to take care of their baby by herself. He states that the applicant's vision is not well. He states that the applicant was in the hospital for more than one week because she cannot see at all. He states that the applicant was taking Cyclosporine 100mg as treatment. He states that he worries about whether their baby may have similar problems as the applicant.

Although hardship to the applicant is not relevant in these proceedings, it will be considered insofar as it results in hardship to the applicant's spouse. The record contains a copy of a prescription label for the applicant's Cyclosporine prescription, and a letter, dated September 25, 2006, from [REDACTED] PhD, Associate Professor and Medical Director, Vice Chair for Clinical Services, University of Texas Medical Branch. [REDACTED] states that the applicant has been diagnosed with Vogt-Koyanagi-Harada syndrome in both eyes, epiretinal membrane, serous retinal detachment and macular edema of both eyes limiting visual activity. [REDACTED] notes that the applicant was treated with prednisone, methotrexate and folic acid. The AAO has carefully reviewed these documents as well as the other medical records submitted by the applicant and her spouse and finds that they demonstrate the applicant's diagnosis with Vogt-Koyanagi-Harada syndrome. However, the documentation does not demonstrate the applicant's current physical condition and the type of care she requires on a daily or periodic basis. For instance, the documents do not indicate the extent of the applicant's visual impairment and the impact it has on her activities of daily living. Further, the documents do not show whether the applicant has access to medical treatment in Mexico and the type of support she receives from family members in Mexico. Finally, the documents fail to discuss whether her child will have a genetic predisposition for the illness. For these reasons, the AAO cannot conclude that the applicant has a medical illness that has resulted in extreme hardship to her spouse due to her inadmissibility.

The applicant's spouse asserts that he has been taking time off from work to visit the applicant in Mexico. He notes that he does not have the money to pay his balance with UTMB (University of Texas Medical Branch) because of his absences from his job. The record reflects that the applicant was billed \$750.07 by the University of Texas Medical Branch for her medical treatment from August 13, 2003 to June 15, 2005. The record does not contain any other financial documentation related to the applicant's spouse's employment, income and expenses. As such, the AAO does not have sufficient documentation to assess the applicant's spouse's financial situation. 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)). Although the applicant's spouse's unsupported assertions are relevant and have been considered, they can be afforded little weight in the absence of supporting evidence.

The AAO recognizes that the applicant's inadmissibility may cause some detriment to her spouse because of the cost of travel to Mexico and his absences from work. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of

extreme hardship based on the record. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Furthermore, U.S. courts have held that demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish 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); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (“the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.”).

Finally, the applicant's spouse, who is a native of Mexico, has only discussed the hardships he would suffer if he remains in the United States separated from the applicant. The applicant's spouse has not asserted, or submitted evidence to demonstrate, that he would suffer extreme hardship in Mexico if he relocated with the applicant there. Accordingly, the AAO cannot determine that the applicant's spouse would suffer extreme hardship if he relocated to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *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.