

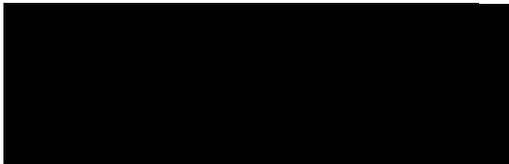
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [REDACTED]
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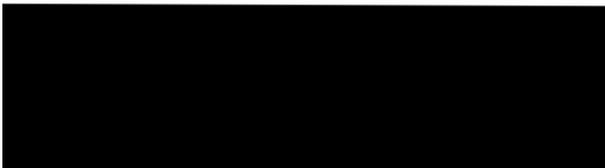
Office: MEXICO CITY (CIUDAD JUAREZ)

Date:
SEP 01 2009

IN RE: Applicant: [REDACTED]

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).

John F. Grissom
Acting 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 establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in June 2000 and did not depart the United States until November 2005. 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 does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 31, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated September 5, 2006, and referenced exhibits. 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.

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. In the present case, the applicant’s U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or her in-laws cannot be considered, except as it may affect the applicant’s U.S. citizen spouse.

The applicant’s U.S. citizen spouse asserts that he will suffer extreme emotional and financial hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility. In a declaration he states that he would suffer extreme emotional hardship due to the close relationship he has with the applicant. In addition, he contends that the applicant maintains all household matters and assists in the care of his elderly parents with respect to their medical needs, as he is away from the country for extended periods of time due to his employment, and her absence would cause him hardship. Finally, the applicant’s spouse notes that he wishes to have children but “a family does not function when one family member is out of the country...” *Affidavit of* [REDACTED], dated September 5, 2006.

It has not been established that the applicant’s spouse is suffering extreme emotional hardship. In addition, it has not been established that the applicant’s spouse is unable to maintain the household without the applicant’s physical presence. Nor has any documentation been provided from the applicant’s spouse’s parents’ treating physician(s), detailing their medical and/or mental health condition, the gravity of the situation, the short and long-term treatment plan, and what specific hardships they will face if the applicant is not physically present in the United States, thereby causing hardship to the applicant’s spouse, the only qualifying relative in this case. Moreover, the

record establishes that the applicant's spouse has numerous relatives in the United States, including a sibling; it has not been established that they are unable to assist him and/or his parents should the need arise. 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)).

Furthermore, it has not been established that the applicant's spouse is unable to travel to Mexico on a regular basis to visit his spouse.¹ Finally, while the AAO sympathizes with the applicant's spouse regarding his desire to start a family, all couples separated by removal have to make alternate arrangements if they want to conceive. It has not been documented that such arrangements in this case rise to the level of extreme hardship.

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 exists. 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.

Regarding the financial hardship referenced by the applicant's spouse, the AAO notes that 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."). The record fails to establish the applicant's spouse's current financial situation, including a detailed list of income and expenses, assets and liabilities, and what specific contributions the applicant made to the household prior to her departure from the United States, to establish that her physical absence is causing extreme financial hardship to her spouse. Moreover, it has not been established that the applicant, a licensed cosmetologist in the United States, is unable to obtain gainful employment abroad, thereby assisting the applicant's spouse financially should the need arise.

¹ Although counsel notes that traveling back and forth to Mexico will cause the applicant's spouse financial hardship, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 although the applicant's spouse may need to make alternate arrangements with respect to his own emotional and financial care, the maintenance of the household and the care of his parents, due to the applicant's long-term physical absence, it has not been established that such arrangements would cause the applicant's spouse extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. Counsel asserts that the applicant's spouse will suffer hardship as he will not be able to find gainful employment in Mexico as the job market in Mexico is not what it is here in the United States. *Brief in Support of Appeal*, dated September 5, 2006. As previously noted, assertions without supporting documentation do not suffice to establish extreme hardship. As such, it has not been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. 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 and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law.

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.