

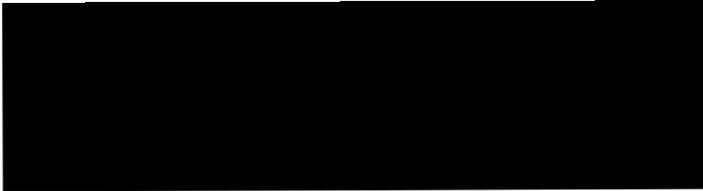
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date: MAR 06 2010

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (INA), 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 District Director, Mexico City, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

An attorney has made various submissions in this matter. That attorney, however, did not file a Form G-28, Notice of Entry of Appearance in this matter. The record contains no indication that the applicant has agreed to be represented by counsel. All representations will be considered, but the decision will be furnished only to the applicant.

The record reflects that the applicant is a native and citizen of Mexico. In a decision dated February 6, 2007 the district director found that the applicant accrued more than one year of unlawful presence in the United States before departing from the United States voluntarily. The district director therefore found the applicant 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).

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 her husband and daughter. The district director also concluded that the applicant had failed to establish that the bar to admission would impose extreme hardship on the applicant's spouse and denied the waiver application accordingly.

On appeal, the applicant's husband reiterated his claim of extreme hardship. The Form I-290 appeal also stated that a brief or additional evidence would follow within 30 days. However, more than 30 days have since transpired, and the AAO has received no further information, argument, or documentation. The appeal will be adjudicated based on the evidence in the record.

The record contains, among other documents, letters from the applicant's husband, an employment verification letter, notes taken by medical doctors during the applicant's husband's medical appointments and other medical documents, birth certificates, marriage certificates, and divorce decrees.

Some of the letters from the applicant's husband were submitted without an English translation. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). The contents of those letters submitted without the requisite English translations shall not be considered.

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-

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure of removal, or

(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.

Evidence in the record shows that the applicant entered the United States without inspection during February 1987 and remained in the United States until she departed voluntarily on June 9, 2005. The record does not show that the applicant ever acquired any legal status in the United States.

Pub. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides at section 309,

(a) IN GENERAL.-Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division, this subtitle and the amendments made by this subtitle shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act (in this title referred to as the "title III-A effective date").

At section 301(b)(3), the IIRIRA provides,

TREATMENT OF UNLAWFUL PRESENCE BEFORE EFFECTIVE DATE.-In applying section 212(a)(9)(B) of the Immigration and Nationality Act, as inserted by paragraph (1), no period before the title III-A effective date shall be included in a period of unlawful presence in the United States.

The IIRIRA was passed by the 104th United States Congress on Sept. 30, 1996. Therefore, for the purpose of this inadmissibility provision, the applicant's illegal presence began on April 1, 1997 and continued until June 9, 2005, a period of more than one year. The AAO finds, therefore, that the applicant is inadmissible for a ten year period beginning June 9, 2005, the date she left the United States, which period has not yet ended. On appeal, counsel did not dispute the applicant's

inadmissibility. The AAO therefore affirms the district director's finding that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available and whether it should be granted.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her child is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 nonexclusive list of 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 also held 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.

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

U. S. courts have 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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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 appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also 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).

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 joins the applicant to live outside of the United States and 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 medical evidence submitted shows that the applicant’s husband has been diagnosed with high cholesterol and high blood pressure and is being treated for those conditions. The record contains no evidence pertinent to the severity of those conditions or whether they cause the applicant’s husband to require the applicant’s presence in the United States.

The record does not show that the applicant earned any income while she was in the United States or that her absence is in any other way depriving the applicant’s husband of funds. The AAO is therefore unable to find that the applicant’s absence from the United States has caused or will cause the applicant’s husband any degree of financial hardship.

The record contains no other evidence pertinent to hardship that the applicant’s absence has caused or will cause to her husband. The appeal in this case reiterated the claim that the applicant’s absence will result in extreme hardship to her husband but provided no additional argument or evidence.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that, if the applicant remains in Mexico, and the applicant’s husband remains in the United States, the applicant’s husband will experience extreme hardship as a consequence of her separation from the applicant. Further, the record does not support a finding that the applicant’s husband will face extreme hardship if he relocates to Mexico to live with the applicant.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists.

Separation from one's spouse or child is, by its very nature, a hardship. Being obliged to leave the country where one has chosen to reside also typically causes some degree of hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

A review of the documentation in the record fails to establish that denial of the waiver application will result in extreme hardship to the applicant's spouse. Because the AAO has 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 rests 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.

The AAO is aware of the emotional stress of being separated from one's spouse or living in a country other than that which one has chosen. However, nothing in the record suggests that, if the application for waiver is denied, the applicant's husband will suffer extreme hardship.

ORDER: The appeal is dismissed.