

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

#1



FILE:



Office: CIUDAD JUAREZ, MEXICO

Date: **MAY 19 2009**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(g) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(g) and 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 Officer in Charge, Ciudad Juarez, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found inadmissible to the United States under section 212(a)(1)(A)(iii) of the Immigration and Nationality Act, (INA, the Act), 8 U.S.C. 1182(a)(1)(A)(iii), as an alien classified as having a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety or welfare of the alien or others. In addition, the applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of 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 sought waivers of inadmissibility under sections 212(g)(3) of the Act, 8 U.S.C. 1182(g)(3) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. 1182(a)(9)(B)(v) of the Act, so that he may reside in the United States with his U.S. citizen spouse.

The officer in charge concluded that although the applicant had established that he was eligible for a waiver under 212(g)(3) of Act, as the applicant's spouse had "signed acknowledgement of the conditions prescribed in consultation with the Centers for Disease Control...[and] has made arrangements for the applicant's treatment...as required....", the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative for purposes of a waiver under section 212(a)(9)(B)(v) of the Act and consequently, denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated November 16, 2006.

On appeal, the applicant submits the following, *inter alia*: Form I-290B, Notice of Appeal (Form I-290B); an affidavit and translation from the applicant's spouse, dated November 30, 2006; an affidavit from the applicant's representative with respect to his federal DUI case, dated December 20, 2006; and court documents relating to the applicant's federal DUI case, including the Criminal Complaint, United States District Court, District of New Mexico, dated December 5, 2005 and an Order Dismissing Criminal Complaint Without Prejudice, United States District Court, District of New Mexico, dated February 28, 2006. In addition, two letters written in Spanish were provided.¹ The entire record has been reviewed in reaching this decision.

Section 212 states, in pertinent part:

¹ 8 C.F.R. § 103.2(b)(3) states:

(3) Translations. Any document containing foreign language submitted to the Service [now the U.S. Citizenship and Immigration Services (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.

Any documents submitted by the applicant that are not in English and/or are not translated into English are not probative and will not be accorded any weight in this proceeding, as the AAO cannot determine whether said documentation supports the applicant's claims for a waiver.

(a) *Classes of Aliens Ineligible for Visas or Admission.*—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.—

(A) In general.—Any alien-

...

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General [now Secretary of Homeland Security])—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior . . . is inadmissible.

(B) Waiver authorized.—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

Section 212(g) reads, in pertinent part:

(g) The Attorney General may waive the application of—

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the [Secretary] after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

Based on a review of the record, the AAO concurs with the officer in charge's finding that the applicant met the requirements of a waiver under 212(g)(3) of Act. As such, this ground of

inadmissibility no longer needs to be addressed. With respect to the officer in charge's finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, the AAO notes that the applicant entered the United States without authorization in March 1999 and did not depart until December 2005. The officer in charge correctly found the applicant to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year. The applicant is eligible to apply for a section 212(a)(9)(B)(v) waiver.

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.

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would encounter extreme hardship if she relocated abroad to reside with the applicant due to his inadmissibility. This criteria has not been addressed. As such, it has not been established that the applicant's spouse, a native of Mexico, would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she remains in the United States while the applicant resides abroad based on the denial of the waiver request. In a declaration, the applicant's spouse asserts that she will suffer emotional, physical and financial hardship. Specifically, she will face emotional hardship due to the close relationship she has with the applicant. She further asserts that she is very ill and needs her husband on a day to day basis. Finally, the applicant's spouse contends that that applicant is the economic support of the family. *Affidavit and Translation of* [REDACTED] dated November 30, 2006.

It has not been established that the applicant's spouse would suffer extreme emotional hardship were she to remain in the United States while the applicant remains abroad. Moreover, it has not been established that the applicant would be unable to visit her husband in Mexico, her native country, on a regular basis. In addition, although the applicant's spouse references illness due to high blood pressure, no letter has been provided from the applicant's spouse's treating physician describing her current medical condition, the severity of the situation, the short and long-term treatment plan, and what specific hardships she will face if the applicant is unable to reside in the United States.

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, 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, and thus the familial and emotional bonds, exist. 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. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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).

As for the financial hardship referenced, 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.” No documentation has been provided to establish what financial contributions the applicant made to the household prior to his departure from the United States in December 2005, 10 months after they were married, to establish that due to the applicant’s physical relocation abroad, the applicant’s spouse is experiencing extreme financial hardship. Nor has documentation been provided with respect to the applicant’s spouse’s current employment situation to establish that she is unable to support herself financially. Moreover, it has not been established that the applicant, gainfully employed in Mexico, is unable to assist his spouse financially. Finally, the record indicates that the applicant’s spouse has two adult daughters, born in 1974 and 1976; it has not been established that they would be unable to assist their mother, emotionally, physically and/or financially, 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)). While the applicant’s spouse may need to make adjustments with respect to her emotional, physical and financial situation while the applicant resides abroad due to his inadmissibility, it has not been shown that such adjustments would cause the applicant’s spouse extreme hardship.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to reside in the United States, and moreover, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. The record demonstrates that the applicant’s spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.