

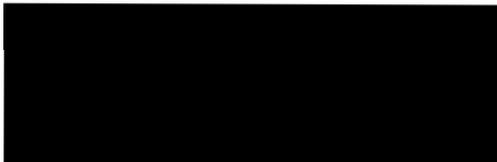
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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U.S. Citizenship
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Services



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FILE:

CDJ 2004 722 619

Office: MEXICO CITY (CIUDAD JUAREZ)

Date: AUG 03 2009

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).

John F. Grissom
Acting 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.

The record reflects that the applicant is a native and citizen of Mexico, the spouse of a U.S. citizen, the mother of two U.S. citizens, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband and children.

The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The district director also found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse and denied the application.

On appeal, the applicant stated (1) that her husband works a rotating shift in the United States which makes his visiting her and their children very difficult, (2) that she is obliged to pay higher medical costs for her children in Mexico because they are not Mexican citizens, and (3) that she cannot adequately fulfill the children's medical needs in Mexico. The applicant also stated that she would submit additional evidence or a brief within 30 days. No further information, argument, or documentation was subsequently submitted.

Section 212(a)(9)(B)(i) of the Act provides:

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 (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or 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.

The record shows that the applicant was unlawfully present in the United States from February 16, 2000 to October 31, 2005, a period of greater than a year. She then departed the United States, triggering inadmissibility pursuant to section 212(a)(9)(B)(i)(I) of the Act. The applicant has not contested her inadmissibility. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

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

The Attorney General [now Secretary of Homeland Security] 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 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.

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 children 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-Moralez*, 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 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 has held:

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).

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 record contains an undated letter in Spanish from the applicant's husband, without an English translation. Because the petitioner failed to submit certified translations of that document, the AAO

cannot determine whether it supports the petitioner'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.

The record contains a letter, dated March 28, 2006, from the applicant's husband. In it, he stated that he is suffering from insomnia, depression, sadness, and anxiety due to his separation from the applicant. He stated that his sons are ill in Mexico and suffering from infections, the nature of which he did not further explain. He stated that he is obliged to pay all of the children's medical costs, although in the United States they have health care coverage. He stated that because he works rotating shifts, he needs the applicant in the United States to care for their family. He stated that he is suffering from being alone in his home, and that his children are suffering from being away from him and their home and "without any creature comforts." He did not further explain their privation.

The record contains a letter, dated March 18, 2006, from the applicant's husband's pastor. That letter reiterates that the applicant's husband works rotating shifts and is therefore unable to care for his children in the United States, and that the applicant's husband must pay more for his children's medical care in Mexico than he would have to if they were Mexican citizens.

The applicant's husband asserted that he has insurance coverage for his children's health care in the United States. He implied that it does not cover their health care in Mexico and that their health care in Mexico is therefore more expensive while they are in Mexico than it would be if they were in the United States. He provided no evidence, however, to support the assertion that he has insurance coverage for his children. He provided no evidence to support the implicit assertion that the coverage does not extend to Mexico. Even assuming, *arguendo*, that he has coverage for his children that does not extend to Mexico, he provided no evidence to support the implicit assertion that the cost of medical care in Mexico exceeds any requisite co-payments or other charges in the United States, and that that this renders their health care in the United States more affordable than health care in Mexico.

The applicant's husband stated that the children suffer from infections. Whether he referred to ordinary childhood diseases or to more serious conditions is unclear. In any event, the record contains no other evidence that the children have any unusual health care needs.

The applicant asserted, on appeal, that she cannot adequately fulfill the children's medical needs in Mexico. Whether she intended to assert that adequate health care is unavailable in Mexico or merely to restate the argument pertinent to the expense of health care in Mexico is unclear. In any event, the record contains no other evidence that adequate health care is unavailable in Mexico and, as was noted above, no other evidence that provision of health care to the children in Mexico is more expensive than it would be in the United States.

Although the statements by the applicant and her spouse are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)).

The applicant's husband did not itemize his children's health care costs and provided no information pertinent to any other expenses. The record contains no evidence pertinent to the applicant's husband's income. As such, the AAO is unable to compare the applicant's husband's expenses and income. The applicant has not demonstrated that her absence, or the allegedly increased cost of the children's medical care, has occasioned any financial hardship to her husband.

The record contains a report of a medical examination, on March 13, 2006, of the applicant's husband. That report states,

[The applicant's husband] is a 28year old Hispanic male who came today for a full physical and history evaluation. He states at last four months of history of nervousness and insomnia with multiples awakening during the night that now are interfering with his activities of the daily living, he refers depressed mood nearly every day with periods of sadness and decreased interest to be with friends or to assist to any events, his appetite has getting poor and he doesn't feels the urge to eat which some weigh loss in the past months. He has developed fatigue and tiredness and has been getting tired with a normal routine work He have feelings of worthlessness and guilt after not been able to solve his personal family problem. Actually this stressfully events has cause a significant distress and impairment in his social , occupational and in other areas of function. He refers to be a U.S. citizen claim with her wife for a residency but she was deported due to be illegal alien in the country and all his family have to move to Mexico due to the impossibility for him to take care of his children one that is 2 years old and the other ten months old , now he is trying to solve this problem with the department of immigration but has not been successful , a good result.

[Errors in the original.]

The report further states,

State normal childhood diseases and all immunization. He was born and raise in , Jalisco, Mexico. Complete 8th grade of secondary school, used to work in agriculture from the age of 14 to 17. He have 3 tears of school instruction, used to work in agriculture , was married for 20 years, wife died and he re-married, now is divorced, lives with one of the sons, retired at age of 62iwhen he started to get sick, move to Wisconsin in 1969 and use to work in a Grain Packing Company.

[Errors in the original.]

Yet further, the report states,

Assessment: This is a 28 year old Hispanic male with acute onset of health problems as nigh mares, , insomnia, lack of appetite, changes in his mood and withdrawal from

friends and family members, that are the symptoms consistent of early depressive disorder. The patient actual condition could be triggered to the exposure to a great stress that cause significant direct psychological impairment in his social, occupational and other important areas of functioning. Actual family problems and stressful conditions has to be discus by a proper health care provider for this reason I will recommend counseling from a psychologist or a psychiatrist, in the mean time I will start the patient in a mild anti-depressive medication like Zoloft 50 mg/day and also I will try to intervene providing a short term treatment for his insomnia with a benzodiazepine starting in a low dose of 7.5

The report further states that the applicant's husband was prescribed a drug to help him sleep and a drug to treat his depression and that he was referred to a [REDACTED] presumably the psychologist or psychiatrist previously mentioned.

The medical report does not explicitly state that the applicant's husband's alleged depression was triggered by the applicant's inability to return to the United States with the children. The report does not explicitly state that the return of the applicant and the children would assuage that asserted condition. As such, it provides very limited support for the proposition that the applicant's enforced absence is causing the applicant's husband hardship.

Further, the AAO notes that the submitted report is based on a single interview between the applicant's husband and the medical doctor. The record fails to reflect an ongoing relationship with the applicant's husband. The conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a medical professional, thereby rendering [REDACTED]'s findings somewhat speculative and diminishing the report's value in determining extreme hardship. The evidence in the record is insufficient, for all of the above reasons, to show that, if the application is denied, the applicant's husband will suffer medical or psychological hardship which, when combined with the other hardship factors in this case, rises to the level of extreme hardship.

Further still, although the report purports to be from [REDACTED] a medical doctor in Milwaukee, Wisconsin, it appears to have been signed by someone else. The record contains no indication that [REDACTED] issued that report.

Yet further, the medical report contains an apparent discrepancy. If the applicant's husband had only three years of school, he was unlikely to have completed the 8th grade. Even further, some portions of that report do not appear to refer to the applicant's husband. The applicant's husband was born on April 7, 1977 and could not, therefore, have retired and moved to Wisconsin during 1969, and the applicant's husband claims that he is now working, rather than retired. The record does not, of course, support the assertion, ostensibly made by [REDACTED], that the applicant's husband is now divorced.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must

resolve any inconsistencies in the record with independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). For these additional reasons, the medical report, ostensibly from [REDACTED] cannot be accorded great evidentiary weight.

The applicant's husband's separation from the applicant and their children, although a hardship, is a disruption of a sort generally to be expected when a spouse is removed from the United States. The applicant stated that her husband's split shift makes his visiting his children more difficult. The record contains no explanation of how a split shift would make visiting the applicant and the children in Tamazula, Jalisco, Mexico, her address of record, markedly more difficult for her husband, whose address of record is in South Gate, California, than it would be given a more typical work schedule. The record contains insufficient evidence to show that this disruption, the difficulty of the applicant's husband in visiting the applicant and their children, causes the applicant's husband hardship that rises to the level of extreme hardship when combined with the other hardship factors in this case.

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 spouse faces extreme hardship if the applicant's waiver application is not granted and he remains in the United States. Rather, the record suggests 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.

In addition, the applicant has not even addressed the issue of whether her husband would face any hardship if he moved to Mexico to be with the applicant and their children, let alone provided any pertinent evidence. Under these circumstances, the AAO cannot find that the applicant's husband would suffer extreme hardship if he moved to Mexico to join his wife and child.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor 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 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 clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than 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). Further, 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).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.