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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



H<sub>2</sub>

FILE:



Office: CIUDAD JUAREZ  
CDJ 2004 712 121 (relates)

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 Officer in Charge, Ciudad Juarez, Mexico, 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 wife of a U.S. citizen, 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 remain in the United States with her husband.

The OIC found that the applicant was unlawfully present in the United States from April 2003 to July 2005, when she departed the United States, and that having been unlawfully present in the United States for more than a year, is now inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The OIC also found that the applicant failed to establish extreme hardship to her U.S. citizen spouse, and denied the waiver application.

On appeal, the applicant submitted additional evidence pertinent to hardship. Although the applicant did not appear to contest the OIC'S determination of inadmissibility, the law and the evidence that led to that determination will be discussed.

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 Form I-130 in the record, which the applicant's husband signed on July 28, 2003, states that the applicant's last entry into the United States was accomplished without inspection. The Form DS-230 in the record states that the applicant lived in El Paso, Texas from April 2003 through July 11, 2005, when the applicant signed that letter. In a statement dated December 27, 2005, the applicant admitted that she entered the United States illegally. The record contains a Form DS-2053, Medical Examination for Immigrant or Refugee Application, dated July 5, 2005, that indicates that the applicant was examined on that day in Ciudad Juarez, Mexico.

The record contains no indication that the applicant's unlawful presence in the United States, beginning in April 2003, was interrupted until July 5, 2005. The evidence in the record is sufficient to show that the applicant was illegally present in the United States from April 2003 to July 5, 2005, and that she has left the United States. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. 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 is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application.

On a Form DS-230, Application for Immigrant Visa and Alien Registration, in the record, the applicant stated that she has a son, born to her on October 17, 2003, in El Paso, Texas. In declarations dated June 8, 2006, both the applicant and her husband refer to their young son. The record, however, contains no birth certificate or other evidence of the existence of that child. That child has not been demonstrated to exist, and, as was indicated above, hardship to the applicant's child is not directly relevant to her eligibility for waiver of inadmissibility.

The applicant's husband is the only qualifying relative shown to exist 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 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).

In a declaration dated December 27, 2005, the applicant stated that she and her husband have been married since she was 13 years old and, "like every married couple," wish to remain together. In a subsequent declaration, dated June 8, 2006, the applicant stated, my husband and I have only been married a short while, and I love him very much." This office notes that, on the Form I-130, the applicant indicated that she was born on August 29, 1984 and that she was married on May 12, 2003, on which date she would have been almost 19 years old.

In her December 27, 2005 declaration, the applicant stated that her husband could not accompany her to Mexico because Ciudad Juarez is dangerous. In her June 8, 2006 declaration, the applicant stated that she fears that if she and her husband do not live together, it will destroy their marriage. She further stated that their separation would be very devastating to her husband.

In his own June 8, 2006 declaration, the applicant's husband also stated that he fears that a forced separation will destroy their family. He expressed considerable satisfaction with his wife and their marriage, and indicated that he wants her to remain with him.

The record also contains an undated, handwritten letter from the applicant's husband in Spanish, 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). Because the applicant's husband's statement was submitted without the required translation, its contents shall not be considered.

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 is refused admission. 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. In fact, because Ciudad Juarez, where the applicant apparently now lives, is separated from El Paso, Texas, where the applicant's husband has lived at all salient times, only by a bridge, the hardship of separation to the applicant's husband is less than in an ordinary

case. The applicant's husband will presumably be able to visit her freely in Mexico, or even reside there, without leaving his present employment. Although the AAO accepts that Ciudad Juarez is a dangerous city, the applicant has provided no evidence that she has been threatened or that she could not, with or without her husband, live outside that city.

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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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.