



U.S. Citizenship
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AUG 12 2009

FILE:

(CDJ 2004 656 490)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the Act), 8 U.S.C. section 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, 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. 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. He was found to be inadmissible to the United States pursuant to 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 one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He 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).

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 26, 2006.

On appeal, counsel for the applicant states that the applicant's spouse is suffering financially and physically due to the applicant's exclusion.

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-

....

(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.

The record indicates that the applicant entered the United States without inspection in March 1999 and remained until he departed voluntarily in July 2005. As the applicant accrued more than one year of unlawful presence and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 directly relevant in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez*, 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 list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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). As this case arises within the jurisdiction of the 9th Circuit Court of Appeals, separation of family will be given appropriate weight in the assessment of hardship factors.

The record includes, but is not limited to, counsel’s brief; statements from the applicant’s spouse; copies of medical benefits statements for the applicant and his spouse; as well as cell phone bills, insurance statements, automobile repair bills, rental leases, grocery bills and receipts; bank statements; photographs of the applicant and his spouse; birth certificates for the applicant and his spouse, as well as a marriage certificate for the applicant and his spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel asserts that the applicant's spouse is suffering financially and physically due to the applicant's exclusion. Specifically counsel asserts that the applicant's spouse had to abandon her rented apartment and is now living with her parents. Counsel further states that due to the emotional stress of the applicant's exclusion, the applicant's spouse has been suffering migraine headaches and other unspecified medical problems. The applicant's spouse states that she and the applicant had been saving money in preparation for the purchase of a home, details her financial obligations and asserts that soon she will have to rely on their savings to support herself and the applicant in Mexico. She also states that she has developed migraine headaches and cries at inappropriate times due to the applicant's absence.

Although the record includes evidence corroborating the spouse's monthly obligations, this documentation does not establish that she is enduring extreme financial hardship. The record contains evidence that the applicant's spouse moved out of a rented apartment. In this case, the applicant's spouse is able to reside with her parents and there is no evidence that the financial impact on her constitutes extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985)(affirming that the loss on sale of a home did not constitute extreme hardship, but was a normal consequence of removal); *See also INS v. Jong Ha Wang*, 450 U.S. 139 (1981)(reasoning that the showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The record contains copies of medical benefits statements for the applicant and his spouse. However, these benefits statements are not sufficiently probative to establish that the applicant's spouse is suffering physical ailments based on the emotional stress of separation. There is no documentation from a licensed health care practitioner corroborating the spouse's assertions that she suffers from migraine headaches, or detailing the other "maladies" from which she suffers, as asserted by counsel. The medical statements fail to explain the nature of the medical services received by the applicant's spouse and there is no report or evaluation by a licensed mental health practitioner indicating that the applicant's spouse is experiencing any emotional stress that rises above that normally experienced by the relatives of excluded aliens. 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)). Therefore, the record does not demonstrate that the applicant's spouse would suffer extreme hardship if she continued to reside in the United States without the applicant.

As previously discussed, determining extreme hardship should also include a consideration of the impacts of relocation on the applicant's qualifying relative. In this case, counsel for the applicant asserts that the applicant has been unable to find employment in Mexico, and that the applicant's spouse would also be unable to find employment there. Neither counsel nor the applicant have articulated any other factors that would impact the applicant's spouse in the event she were to relocate to Mexico. The AAO acknowledges counsel's assertion that the applicant has been unable to find employment, but assertions are not sufficient to establish an applicant's burden. The record

fails to document the employment conditions in the area where the applicant is currently residing, and there is no other evidence that objectively verifies that the applicant has been seeking employment. In addition, the record does not contain any documentation that indicates the applicant's spouse would be unable to find employment. 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). As such, the record does not establish that the applicant's spouse would experience extreme hardship if she were to relocate to Mexico 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 spouse would face extreme hardship if the applicant is refused admission. U.S. court decisions 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). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.

ORDER: The appeal is dismissed.