



U.S. Citizenship
and Immigration
Services

H2

[REDACTED]

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) DATE: **DEC 02 2009**
(CDJ 2004 723 305 relates)

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[REDACTED]

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 waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in April 1998 and did not depart until December 2005. The applicant was thus found to be 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), for having been unlawfully present in the United States for more than one year.¹ The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child, born in 1999.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 30, 2006.

In support of the appeal, previous counsel for the applicant submitted the following: a letter, dated November 28, 2006; an affidavit from the applicant's spouse, dated November 28, 2006; information about human rights practices in Mexico; a copy of the applicant's marriage certificate and translation; a copy of the applicant's spouse's Certificate of Naturalization, dated May 19, 2004; a copy of the applicant's child's U.S. birth certificate; documentation with respect to the applicant's child's academics; and financial documentation. In addition, on November 11, 2008, counsel submitted supplemental documentation including, *inter alia*: an affidavit from the applicant's U.S. citizen spouse, dated November 8, 2008; a psychological evaluation in regards to the applicant's spouse and child, dated March 17, 2008; a copy of the applicant's child's U.S. birth certificate; a letter in support; family photographs; and information about human rights practices in Mexico. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) 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

¹ The applicant does not contest the district director's finding of inadmissibility. Rather, he is requesting a waiver of inadmissibility.

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...

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

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).

The record contains references to the hardship that the applicant's U.S. citizen child would suffer if the applicant's waiver of inadmissibility is not granted. Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or their child cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse contends that she will suffer emotional and financial hardship if the applicant is unable to reside in the United States. In a declaration she states that she is suffering emotional hardship due to the love and affection she feels for her physically absent spouse and due to the emotional hardship her child is experiencing based on his father's long-term physical absence.

She notes that her son is struggling in school and she is unable to dedicate the time he needs to study with him. In addition, she asserts that she is experiencing financial hardship as the applicant is not in the United States to assist with the finances of the household; she contends that she is working overtime to be able to pay the bills and she is unable to afford to go back to Mexico to visit the applicant often due to the expense. *Affidavit of* [REDACTED] dated November 28, 2006. Moreover, the applicant's spouse notes that working long hours has forced her to leave her child under the care of others, which has affected her relationship with her child. *Affidavit of* [REDACTED] dated November 8, 2008.

In support of the emotional hardship referenced, a psychological evaluation has been provided by [REDACTED]. Dr. [REDACTED] concludes that based on the applicant's long-term absence, the applicant's spouse is suffering from Adjustment Disorder with Mixed Anxiety and Depressed Mood and further notes that her depressive symptomology will soon evolve into Major Depressive Disorder. [REDACTED] also concludes that with respect to the applicant's child, if he remains separated from his father, he will develop "a basic 'mistrust' of the world, in addition to the Separation Anxiety Disorder.... The longer [REDACTED] [the applicant's child] remains separated from his father, the more difficult his situation, both emotionally and academically, will become..." See *Psychological Evaluation from* [REDACTED] dated March 17, 2008.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and child and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse and/or child or any treatment plan for the conditions referenced by [REDACTED], to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of exceptional hardship. It has thus not been established that the applicant's spouse is experiencing extreme emotional hardship due to the applicant's inadmissibility.

Nor has it been established that the applicant's child is suffering extreme hardship due to his current living arrangement with his mother in the United States and/or that alternate arrangements for his care, such as a relocation abroad to reside with his father, would cause the child extreme hardship, thereby causing the applicant's spouse extreme hardship.² Finally, it has not been established that

² Although the record establishes that the applicant's child is receiving additional support to assist in bringing his reading to a higher level, the child is receiving help, as noted, and as such, it has not been established that the applicant's physical presence is required to achieve academic success, thereby ameliorating the referenced hardship on the applicant's spouse. See *Letter from* [REDACTED] dated November 1, 2006. As for the teacher summary comments provided, pursuant to 8 C.F.R. § 103.2(b)(3),

(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

the applicant's spouse is unable to travel to Mexico on a regular basis to visit his spouse. Although the applicant's spouse notes that she is unable to travel to Mexico regularly due to her employment and the expenses associated with travel, no documentation has been provided to support said assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Suffice*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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, whether between husband and wife or parent and child, 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 exists. 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 by the applicant's spouse, 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." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

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.

The teacher summary comments submitted with the appeal are written in a foreign language. 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.

The record establishes that the applicant's spouse is gainfully employed. *See Pay Stubs issued to [REDACTED] from October to November 2006.* As of November 16, 2006, the applicant's spouse had earned over \$29,000, well above the poverty guidelines for 2009. *See Form I-864P, Poverty Guidelines for 2009.* It has thus not been established that the applicant's spouse is experiencing extreme financial hardship due to the applicant's inadmissibility. In addition, the record fails to indicate what specific contributions the applicant made to the household prior to his departure from the United States, to establish that his physical absence is causing extreme financial hardship to his spouse. Finally, it has not been established that the applicant is unable to obtain gainful employment abroad, thereby affording him the opportunity to assist his spouse with respect to their finances should the need arise. While the applicant's spouse may need to make adjustments with respect to her financial situation, the maintenance of the household and the care of her child 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.

The AAO recognizes that the applicant's spouse will endure hardship as a result of continued separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse is suffering extreme emotional and/or financial hardship due to the applicant's inadmissibility.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse contends that she will suffer extreme hardship in Mexico, due to crime and violence, a substandard economy, gender discrimination which would lead to an inability to obtain gainful employment, and unfamiliarity with the country, culture, customs and language. Moreover, she notes that her son would not be able to receive the special academic attention he needs. *Supra* at 1-2. In support of the applicant's spouse's assertions, previous and current counsel submitted information about human rights practices in Mexico. The AAO notes that the documentation is general in nature and fails to establish that the applicant's spouse would suffer extreme hardship were she to relocate to Mexico, her native country, to reside with the applicant. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. As such, the applicant has failed to establish that his U.S. citizen spouse, a native of Mexico, would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

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 under section 212(a)(9)(B)(v) of the Act, 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.