



U.S. Citizenship
and Immigration
Services

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DEC 02 2009

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 698 104

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 applicant, [REDACTED], is a native and citizen of Mexico who was found to be inadmissible to the United States under 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. The applicant is the spouse of [REDACTED] a naturalized citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), so as to immigrate to the United States. The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 22, 2007. The applicant filed a timely appeal.

On appeal, counsel states that the evidence submitted on appeal establishes that [REDACTED] has suffered and will continue to suffer extreme hardship if his spouse is not permitted to return to the United States. He states that [REDACTED] is experiencing financial hardship providing his wife \$750 to \$800 per month as well as supporting himself and his daughter in Colorado. He indicates that separation from the applicant has affected [REDACTED] physically and psychologically. He states that [REDACTED] has no close family members in Mexico other than the applicant and has a minor daughter who lives with him. Counsel indicates that it would be difficult for [REDACTED] to relocate to Mexico with his daughter, and [REDACTED] would be unable to find employment in Mexico due to his limited job skills. Counsel states that a recent Los Angeles Times article noted that unemployment in Mexico has soared, food prices have risen, and millions of families rely on remittances.

The AAO will first address the finding of inadmissibility.

Inadmissibility for unlawful presence is found under section 212(a)(9)(B) of the Act. That section provides, in part:

(B) Aliens Unlawfully Present

(i) In general. - 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 . . . 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.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in 1996 and remained in the country until August 2005. For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.¹ The applicant therefore accrued unlawful presence from April 1, 1997 to August 2005, and triggered the ten-year-bar when she left the United States, rendering her inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The waiver for unlawful presence is found under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). That section provides that:

- (v) Waiver. – The Attorney General [now Secretary, 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 waiver 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 an applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(a)(9)(B)(v) of the Act. Thus, hardship to the applicant and her step-daughter will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s naturalized citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). *Matter of Cervantes-Gonzalez* lists the factors considered relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors relate to an applicant’s qualifying relative and include the

¹ Memorandum by Lori Scialabba, Assoc. Director, Refugee, Asylum and International Operations Directorate and Pearl Chang, Acting Chief, Office of Policy and Strategy, Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act; AFM Update AD 08-03; May 6, 2009.

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. *Id.* at 565-566.

The factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The trier of fact considers the entire range of hardship factors in their totality and then determines "whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In rendering this decision, the AAO has carefully considered all of the evidence in the record including the psychological evaluation, affidavits, letters, a mortgage statement, pay statements, income tax records, medical records, articles about Mexico, and other documentation.

The AAO notes that the record contains letters and medical records pertaining to [REDACTED] that do not have an English language translation. The regulation at 8 C.F.R. § 103.2(b)(3) states:

(3) Translations. Any document containing foreign language submitted to the Service [now the Bureau of Citizenship and Immigration Services, "Bureau"] 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.

In that the letters that are written completely in Spanish and the medical records have no translation, those documents will carry no weight in this proceeding.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's husband must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins the applicant to live in Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Counsel indicates that [REDACTED] finances have been significantly impacted by separation from the applicant. [REDACTED] states in his affidavit that he has been financially burdened since his wife left the United States and that "[b]etween the expenses for [REDACTED] in Mexico, my daughter, and the house, I have very little left over at the end of the month." The record contains [REDACTED] wage statements, which indicate that based on a 40-hour work week his weekly net pay is approximately \$575. Income tax records for 2006 show that he received a refund of \$2,418. [REDACTED] mortgage is \$1,274 per month and he sent \$2,325 to his spouse from January 2, 2007 to April 4, 2007. [REDACTED] indicates in his affidavit that he paid \$2,000 to \$3,000 for his wife's surgery in February 2006, and

states that he is having difficulty saving for his daughter's college education. [REDACTED] has been living in Mexico since August 2005.

In view of the fact that since August 2005 [REDACTED] has been able to support his household in Colorado and his spouse in Mexico, the AAO finds that the record fails to establish that [REDACTED] would experience extreme financial hardship if he remained in the United States without the applicant.

[REDACTED] is concerned about separation from his wife. Family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (“the most important single hardship factor may be the separation of the alien from family living in the United States”).

[REDACTED] conveys in his affidavit that he is concerned about his wife's health and that as a result of separation from her he has physical symptoms such as trouble sleeping and headaches, and depression. [REDACTED] indicates that in June 2005 he was prescribed medication for anxiety and Lipitor for high cholesterol. With regard to his daughter, [REDACTED] indicates that he is strained raising a teenage daughter without the applicant, who was a mother figure. He states that he tried to persuade his daughter to seek psychological help. The letter dated April 9, 2007 by [REDACTED] states that [REDACTED] presents with symptoms of depression and anxiety caused by separation from his wife. The undated letter in the record by [REDACTED] conveys that the applicant received continuous weekly psychotherapy to manage her depression.

With regard to [REDACTED] evaluation of [REDACTED] although the input of a 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 [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. 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 [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of family separation. However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)).

The record before the AAO fails to establish that the situation of [REDACTED] if he remains in the United States without his spouse, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by [REDACTED] is unusual or beyond that which is normally to be expected from an applicant's bar to admission. *See Hassan and Perez, supra.*

With regard to joining the applicant to live in Mexico, counsel states that other than the applicant [REDACTED] has no close family members in Mexico. Although [REDACTED] has no close family members in Mexico, the AAO notes that he would not be alone there as he would be reunited with his wife.

Counsel states that [REDACTED] has a minor daughter who lives with him and that it would be difficult for [REDACTED] to relocate to Mexico with his daughter. Although relocating to Mexico would be difficult, [REDACTED] has not described how he would experience extreme hardship as a result of such difficulties.

Counsel states that [REDACTED] would be unable to find employment in Mexico due to his limited job skills. The Los Angeles Times article describes slower economic growth with Mexico. The National Public Radio article conveys that the North American Free Trade Agreement (NAFTA) has negatively impacted Mexico's employment and economy. **However, neither of these articles sufficiently addresses [REDACTED] prospects for employment in Mexico due to his skill set.**

When considered both individually and collectively, the hardship factors presented do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.