



U.S. Citizenship
and Immigration
Services

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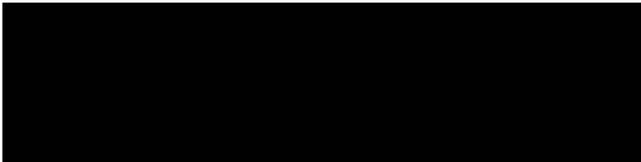
FILE: Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: DEC 03 2009
CDJ 2002 840 026

IN RE:



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

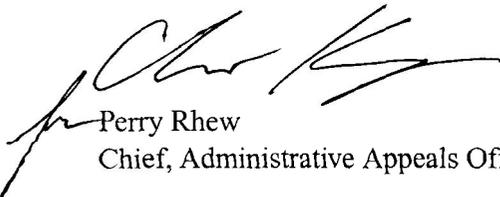
ON BEHALF OF APPLICANT:



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 reflects that the applicant is a 34-year-old native and citizen of Mexico who was 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. The applicant is married to a citizen of the United States, and he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife in the United States.

The District Director found that the applicant failed to establish extreme hardship to his spouse, and denied the application accordingly. *Decision of the District Director*, dated January 5, 2007. On appeal, the applicant contends through counsel that the denial of the waiver imposes extreme hardship on his wife. *See Form I-290B, Notice of Appeal; Brief on Appeal*, dated February 4, 2007.¹

The record contains, among other things, a marriage certificate, showing that the couple married in Oregon on March 6, 2002; letters from the applicant's wife and her mother discussing the hardships imposed on her as a result of the denial of the waiver; a letter from the applicant; medical records for the applicant's wife; letters from the applicant's employers; family photographs; Mexican country conditions information; and a brief on appeal. The entire record was reviewed and considered in rendering this decision on appeal.

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

(B) 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

¹ Counsel for the applicant correctly contends that the District Director erred in citing to *Matter of Tin*, 14 I&N Dec. 371 (Reg. Commr. 1973) and *Matter of Lee*, 17 I&N Dec. 275 (Commr. 1978), because these decisions discuss the factors relevant to consent to reapply for admission after deportation from the United States, which are not applicable to this case. Because the AAO reviews these proceedings de novo, 5 U.S.C. § 557(b), and dismisses the appeal, this error is harmless. Counsel also correctly notes that the decision of the District Director contains an extra paragraph of facts that do not relate to the applicant's case. *See Decision of the District Director*, at 2 (referring to a female applicant who resided in the United States from 1995 to 2005).

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 shows that the applicant entered the United States without being inspected and admitted in or around April, 1998. *See Form I-601, Application for Waiver of Ground of Excludability.* The applicant's spouse filed a Petition for Alien Relative (Form I-130) on September 13, 2002, and U.S. Citizenship and Immigration Services approved the petition on November 27, 2002. *See Form I-130, Petition for Alien Relative.* The applicant departed the United States in January, 2006. *See Form I-601.* The applicant's unlawful presence for one year or more and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).²

In order to obtain a section 212(a)(9)(B)(v) waiver for unlawful presence, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals

² The District Director erred in characterizing the ground of inadmissibility in section 212(a)(9)(B)(i)(II) of the Act as a "permanent bar to admission." *See Decision of the District Director, supra* at 3. Rather, departure after unlawful presence of one year or more triggers a ten-year bar to admission. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(II).

(BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse is a 27-year-old native and citizen of the United States. *See Birth Certificate for* [REDACTED]. The applicant and his wife have been married for seven years. *See Marriage Certificate*. The applicant’s spouse asserts that she is suffering extreme emotional, financial, and medical hardships as a result of the denial of the waiver.

In support of the emotional hardship claim, the applicant’s spouse asserts that the separation from her husband has taken an emotional toll on her, and that it has been difficult “to stay strong during these hard times.” *Letter from* [REDACTED] *in Support of Appeal*. [REDACTED] states that the applicant is a caring and supportive husband who has encouraged her to continue with her college

education, and who helps her deal with the stress of work. *Letter from ██████████ in Support of Waiver.* ██████████ mother states that the applicant and his wife “do many things together and depend on each other.” *Letter from ██████████ dated Jan. 21, 2007.* ██████████ notes that her “life is not complete” without the applicant. *Letter from ██████████ in Support of Appeal.* The applicant’s wife requests his return so that they can pursue their dreams of buying a home, completing college, and having children together. *Letters from ██████████*

In support of the financial hardship claim, the applicant’s spouse states that she is “physically exhausted from working seven days a week in order to pay [their] bills as well as send money to [the applicant] so that he can survive in Mexico.” *Letter from ██████████ in Support of Appeal, supra.* It appears that the applicant’s wife works at a pediatric clinic where she earns approximately \$20,000 per year. *See Brief on Appeal.* Although the record lacks specific information regarding the couple’s income and expenses, it appears that the applicant helped ██████████ with the house payment, electricity, gasoline, the car payment, and credit cards. *Letter from ██████████ dated Jan. 21, 2007; see also Letter from ██████████ dated Jan. 22, 2007* (stating that the applicant has been an employee since 2000); *Letter from ██████████* (indicating the applicant’s employment by ██████████).

Regarding medical hardship, the record reflects that the applicant’s wife has been diagnosed with interstitial cystitis, a painful condition of her bladder. *See Medical Records for ██████████.* This condition may require, on occasion, weekly medical treatments. *Note from ██████████ Letter from ██████████ in Support of Waiver.*

Although the record shows that separation from the applicant has caused various hardships to the applicant’s wife, the evidence in the record is not sufficient to demonstrate that these difficulties, considered alone or in the aggregate, are extreme. First, while the emotional hardship of separation is apparent from ██████████ letters, the applicant did not provide medical records, probative testimony, or other evidence to show that the psychological hardships faced by ██████████ are unusual or beyond what would be expected upon family separation due to one member’s inadmissibility. Second, without more detailed evidence of the couple’s income and expenses, the AAO cannot conclude that family separation has caused extreme financial hardship to ██████████. Further, a showing of economic detriment generally is not sufficient to warrant a finding of extreme hardship. *See Hassan, 927 F.2d at 468.* Third, although ██████████ has a chronic and painful medical condition, the evidence in the record does not support a finding that she suffers from severe medical hardship or that her condition was caused or exacerbated by the separation from the applicant. *See Medical Record dated August 29, 2004* (noting that ██████████ reported her medical condition as “going on all of her life.”)

Regarding relocation, the applicant contends that his spouse’s move to Mexico to be with the applicant would cause extreme hardship based on her ties to the United States, and her lack of ties to Mexico. *See Brief in Support of Appeal.* In the United States, ██████████ lives in the same town as her U.S. citizen mother, and she has ties to her job, her doctor, and her home. *See id.; Letters from ██████████; Letter from ██████████ supra.* Apart from the applicant, ██████████ has no ties to Mexico; she has never traveled there, and she does not speak, read, or write Spanish. *Brief in*

Support of Appeal; Letter from ██████████ in Support of Waiver. Given her lack of language skills and the poor economy in Mexico, ██████████ fears that she would not be able to obtain employment or to complete her college education upon relocation. *Id.*; see also *Mexican Country Conditions Reports*. Further, ██████████ would lose her physician and her employer-provided health insurance, which covers her treatment for interstitial cystitis. The applicant's wife also notes the poor human rights conditions in Mexico. See *Brief in Support of Appeal; Mexican Country Conditions Reports*.

Given the applicant's wife's ties to the United States, as well as her medical condition, the record suggests that relocation to Mexico could pose adjustment difficulties for ██████████. However, the evidence in the record is not sufficient to support a finding that relocation would cause extreme hardship. For instance, there is no evidence in the record to support a finding that ██████████ would be subjected to a diminished availability of medical care in Mexico, or that needed care would be substandard. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566 (noting relevance of significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate). Additionally, given the lack of detailed information regarding the couple's income and expenses, there is insufficient information to conclude that relocation would cause extreme financial detriment. Accordingly, the record does not support a finding that any difficulties would be unusual or beyond that which would normally be expected upon relocation. See *Perez*, 96 F.3d at 392.

In sum, although the applicant's spouse claims hardships based on family separation and relocation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. See *id.*; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. See *id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.