



U.S. Citizenship
and Immigration
Services

H2

FILE:

[REDACTED]
(CDJ 2005 519 207)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: DEC 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 (the Act), 8 U.S.C. section 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, 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. 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. She 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 her last departure. She is married to a United States citizen and has two children, one of whom is a U.S. citizen. She 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 her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 17, 2007.

On appeal, the applicant states that the District Director erred and abused his discretion in denying her application. She asserts that her spouse would experience extreme hardship if she is forced to remain in Mexico.

The AAO notes that the applicant may be represented by counsel. The record, however, does not include a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing this representation. Accordingly, the AAO will consider the applicant to be self-represented but will consider all evidence submitted in support of the waiver application.

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 November 1996, and remained until she departed voluntarily in March 2006. Therefore, the applicant was unlawfully present in the United States for over a year, from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until March 2006, and is now seeking admission within ten years of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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 or her United States citizen child 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 an 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she accompanies the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record includes, but is not limited to, a brief; statements from the applicant’s spouse; photographs of the applicant, her husband and their daughter; a psychological evaluation of the applicant’s spouse by [REDACTED] Country Reports on Human Rights Practices - 2006,

section on Mexico, published by the U.S. Department of State; a copy of a Public Announcement for Mexico, issued by the U.S. Department of State, current as of June 15, 2007; a copy of a Consular Information Sheet for Mexico, dated February 23, 2007; copies of other country conditions materials including, but not limited to, reports from Amnesty International and the United States-Mexico Border Health Commission; a Country Profile on Mexico by the Library of Congress, dated July 2006; an online news article on drug violence in Mexico;¹ a copy of a Countrywide mortgage account report (owner unspecified); a pay stub for the applicant's spouse; copies of insurance bills and a telephone bill for the applicant's spouse; a billing history for water service and consumption charges; a copy of the applicant's marriage certificate; and statements from family and friends of the applicant and her spouse attesting to their relationship and the effects of separation.

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

On appeal, the applicant asserts that her spouse is experiencing extreme emotional and financial impacts due to her exclusion from the United States, and also that the District Director should have taken her children, who are currently residing in Mexico and growing up without their father, into account as their hardship translates into hardship for her spouse.

It should be noted that Congress specifically excluded children as qualifying relatives in 212(a)(9)(B) proceedings, and as such any hardship to them is not directly relevant to a determination of extreme hardship. Hardship to a non-qualifying relative, i.e., a child, is considered only insofar as it creates hardship to the qualifying relative. Therefore, the AAO will consider hardship to the applicant's United States citizen child only to the extent that the record in this proceeding establishes, through documentary evidence, how such hardship would affect the applicant's spouse, the only qualifying relative.

The record includes a psychological evaluation by [REDACTED] in which he narrates the history of the applicant's spouse and reports that the applicant's spouse completed two standardized psychological tests on which his score was significant for depression; is experiencing problems with his sleep and concentration; has lost his appetite; blames himself for all his problems, including his separation from the applicant; has developed shingles and nerve problems in his back and shoulders; is feeling financial strain because of his visits to Mexico and the money he sends the applicant in Mexico and has had to rent out his home; and thinks about suicide on a daily basis. [REDACTED] states that the standardized tests administered to the applicant's spouse indicate that he suffers from dependent personality disorder and that this underlying disorder is the basis for his distress over his separation from the applicant. [REDACTED] concludes that the applicant's spouse "demonstrates one of the worst cases of clinical depression imaginable," that the applicant's spouse's "life is in grave danger" and that continued separation could result in the applicant's spouse harming himself. The record also includes letters from the applicant's spouse's employer, father and friend, all of whom indicate that the applicant's outgoing personality has changed and that he is sad and depressed. The

¹ The AAO notes that the record contains another online news article in Spanish. As this article is not accompanied by an English-language translation, it will not be considered pursuant to the regulation at 8 C.F.R. § 103.2(b)(3).

applicant's spouse's employer also states that the applicant's spouse's coworkers are worried about him because he has become remote and quiet.

While the AAO does not question that the applicant's spouse is suffering emotionally as a result of his separation from his wife, it does not find the submitted evaluation to be sufficient to establish the status of his mental state. [REDACTED] indicates that he diagnosed the applicant's spouse with dependent personality disorder based on the results of the standardized tests he administered and that this disorder is the source of his depression. However, [REDACTED] offers no explanation as to what test findings led him to the diagnosis of this personality disorder or that he found the applicant's spouse to have evidenced the traits of a dependent personality during their interviews, only that he confirmed his diagnosis when talking with the applicant by telephone. The AAO also notes that the record fails to contain any medical documentation that would support the applicant's spouse's statements that he has developed shingles and nerve problems. Moreover, the AAO observes that, despite his conclusions concerning the serious state of the applicant's spouse's mental health, Dr. [REDACTED] fails to indicate that he advised the applicant's spouse to seek immediate treatment for his depression, that he provided him with a referral to a mental health program or clinic, or advised him to see his own doctor for medication to provide some relief from his depression. Accordingly, it finds the submitted evaluation to be of diminished evidentiary weight to a determination of extreme hardship.

The record also fails to include sufficient financial documentation to establish that the applicant's spouse is under a financial strain. It includes a pay stub for the applicant's spouse, as well as credit card statements, a mortgage statement, a billing history for water consumption and service, insurance statements and a cellular telephone bill. In a May 28, 2007 statement, the applicant's spouse provides a breakdown of his bills and income, stating that without the applicant present he will be unable to meet his financial obligations and that he is searching for a second job to increase his income. In his interview with [REDACTED], the applicant's spouse indicated that his financial problems had increased because he was sending money to the applicant in Mexico and was traveling there frequently. He further reported to [REDACTED] that he had been forced to rent his home and move in with the applicant's mother because of his financial difficulties.

The record, however, does not establish the applicant's spouse's financial status. There is no documentary evidence in the record that demonstrates that the applicant's spouse is sending money to the applicant in Mexico, is traveling frequently to Mexico or is renting his home. The AAO also notes that nothing in the record, e.g., notices of late payments or delinquency notices, indicates that the applicant's spouse is not meeting his financial obligations. Accordingly, the AAO does not find the record, as currently documented, to establish that the applicant's spouse would experience extreme hardship if she were to be excluded and he remained in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant.

On appeal, the applicant asserts that her spouse will experience a number of hardships that will cumulatively result in extreme hardship if he joins her in Mexico. She asserts that her spouse's and

children's health will be impacted by not having access to health care in Mexico, that her spouse has no significant family ties in Mexico, that he would be unable to find employment in Mexico because of the state of the economy and because of his status as having been previously employed in the United States. The applicant further asserts that her spouse would take a financial loss on the sale of their home, and that he would have to leave behind his family and community in the United States.

in his evaluation of the applicant's spouse finds that the possibility of relocation to Mexico has sent the applicant's spouse into a deep depression. He reports that the applicant's spouse indicated to him that he is fearful of moving to Mexico where he knows only his parents and a brother, and cannot bear the thought of leaving his extensive social support network in the United States. He also notes that the applicant's spouse is concerned about the poverty and violence in Mexico. further indicates that the applicant's spouse is worried that he would be unable to afford medical care for himself and that his children would not receive a quality education. He further notes that the applicant's spouse's severe reactions to his fears concerning life in Mexico would likely worsen if he actually moved to Mexico. concludes that if the applicant's spouse were to lose his extensive family social support network in the United States, he would be at an increased risk of harming himself.

The record does not document that the applicant, the applicant's spouse or their children have any existing health conditions. Neither does evidence in the record indicate that they would not qualify for health care services under Mexico's nationalized health care system or that they would be unable to afford private health care. The applicant's assertions that her spouse would be unemployable in Mexico because employers would discriminate against him for having previously worked in the United States are also unsupported by documentary evidence. While the record contains submissions on the country conditions in Mexico that discuss the state of the Mexican economy in a broad, national context, such generalized statistics are not sufficiently probative of the applicant's spouse's situation to establish that he would be unemployed in Mexico. In *Matter of Ige*, the Board of Immigration Appeals (BIA), in summarizing considerations, noted that the mere existence of a reduction in a standard of living or financial hardship or difficulty readjusting, without more, do not constitute extreme hardship. The fact that economic, educational, and medical facilities and opportunities may be better in the United States does not establish extreme hardship. *Matter of Ige*, 20 I&N 880 (BIA 1994).

As previously discussed, the AAO does not find the evaluation prepared by to be sufficiently probative to establish the emotional impacts of relocation on the applicant's spouse. has found the applicant's spouse to suffer from dependent personality disorder and that, as a result, his mental health is intricately tied to his network of family members in the United States,. However, 's evaluation fails to provide an explanation of the basis on which he reached his diagnosis of dependent personality disorder. Further, the AAO again notes, that he fails to indicate that he has referred the applicant's spouse for immediate treatment for the mental health conditions he has diagnosed or advised the applicant's spouse of his need for immediate treatment. As such, the AAO does not find the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Mexico.

When considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the hardship factors discussed in the record do not support a finding that the applicant's husband would face extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's husband will experience hardship as a result of her inadmissibility. The record, however, does not distinguish his hardship from that commonly associated with removal or exclusion and does not, therefore, rise to the level of "extreme" as informed by relevant precedent. 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 her 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 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) 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.