



U.S. Citizenship  
and Immigration  
Services

H2



FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)  
CDJ 2005 511 624 (RELATES)

Date: DEC 03 2009

IN RE: [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:

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink that reads "Michael Shumway".

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, [REDACTED] 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 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 and seeking admission within 10 years of his last departure from the United States. The applicant 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), in order to return to the United States to join his U.S. citizen spouse and children.

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

On appeal, the applicant asserts that his absences have caused his family a great deal of hardship. He states that his wife had to seek professional help and has been devastated by his absence. He states that his wife and children are in a bad situation because she is psychologically, emotionally and physically devastated. He states that it has been extremely difficult for his family. He states that his wife recently gave birth to their second child and she is psychologically devastated. He states that his wife and children need his moral, emotional and psychological support.

In support of the application, the record contains, but is not limited to, a psychological evaluation of the applicant's spouse, the applicant's children's birth certificates, the applicant's spouse's birth certificate, a statement from the applicant's spouse, a letter from the applicant's friend, wedding photographs, and a medical letter regarding the applicant's spouse's pregnancy. The entire record was reviewed and considered in rendering a decision on the appeal.

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 shows that the applicant entered the United States without inspection in September 1998. The applicant remained in the United States until departing in April 2006. The applicant accrued unlawful presence from September 1998 until April 2006. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of his April 2006 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of his last departure.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *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 (BIA) 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 United States 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the

applicant or in the event that he or she 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 reflects that the applicant wed [REDACTED] a U.S. citizen, on June 8, 2002. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and his spouse have two children together, a three-year-old U.S. citizen child, [REDACTED], and a seven-year-old U.S. citizen child, [REDACTED]. Hardship to the applicant's children will be considered insofar as it results in hardship to the applicant's spouse.

The record contains a letter from the applicant's spouse that was initially filed with the waiver application, dated April 13, 2006. The applicant's spouse states in her letter that she has been under constant severe stress and depression due to the applicant's immigration status. She states that the applicant is the love of her life and her companion. She states that without the applicant's presence she would not be able to cope and function in society. She states that her children would lose the opportunity to excel in school without the applicant's presence. She states that the applicant has provided moral as well as loving support, and is a very hard working dedicated father and husband. She states that if the applicant's waiver is denied, his absence would result in extreme emotional, psychological and physical hardship.

As corroborating evidence, the applicant furnished a psychological evaluation of his spouse from [REDACTED]. Ms. [REDACTED] states in her evaluation that her assessment is based on an initial examination of the applicant's spouse on March 15, 2007. Based on this initial examination, [REDACTED] diagnosed the applicant's spouse with Major Depressive Disorder, Single Episode, 296.20 and Generalized Anxiety Disorder, 300.02. [REDACTED] indicates that the applicant's spouse's prognosis "is devastating if family unity continues interrupted, and if separation is prolonged." [REDACTED] recommends that the applicant's spouse "submit to a medication evaluation to determine if she can benefit from antidepressants in order to decrease her symptomatology. . . . enroll in psychological treatment to develop coping skills to deal with the stressors in a more effective manner."

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the major depressive disorder and generalized anxiety disorder suffered by 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 the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The AAO recognizes that the applicant's spouse and children are suffering emotionally as a result of their separation from the applicant. Their situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the

record. 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 point made in this and prior decisions on this matter is that 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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).

The applicant’s spouse states in her letter that she has all of her family and interests in the United States. She states that she and her children have been raised in the United States and speak the English language. She states that she has resided and worked her entire life in the United States and would not be able to cope in a different lifestyle.

The AAO finds that the applicant has failed to demonstrate that she would suffer extreme hardship in Mexico if she relocated with the applicant there. The AAO notes first that United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. The Ninth Circuit Court of Appeals in *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Second, the applicant’s spouse’s birth certificate reflects that her parents were born in Mexico, indicating she is likely familiar with Mexican culture and customs. Further, her assertions that she would not be able to cope in a different lifestyle are speculative. She has failed to provide any concrete examples of the anticipated hardship she fears she would suffer in Mexico. Accordingly, the AAO cannot conclude that the applicant’s spouse would suffer extreme hardship if she relocated to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant’s spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility 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 remains entirely 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.