



U.S. Citizenship
and Immigration
Services

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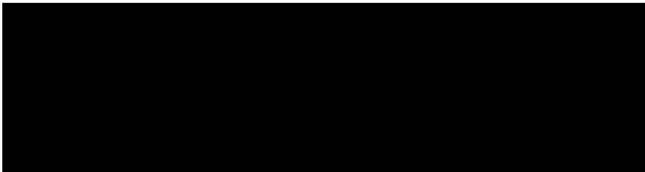
FILE: [REDACTED] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: DEC 03 2009
CDJ 2004 780 354

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)

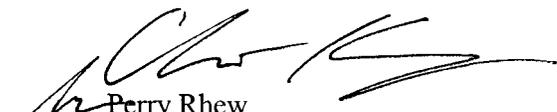
ON BEHALF OF APPLICANT:



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 36-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 she 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 her husband and children in the United States.

The District Director found that the applicant failed to establish extreme hardship to her spouse, and denied the application accordingly. *Decision of the District Director*, dated November 14, 2006. On appeal, the applicant contends through counsel that the denial of the waiver imposes extreme hardship on her husband and children. *See Form I-290B, Notice of Appeal*, dated December 12, 2006.

The record contains, among other things, a copy of the couple's marriage certificate; a declaration and letter from the applicant's husband discussing the hardships imposed on him as a result of the denial of the waiver; birth certificates for the couple's two U.S. citizen children; medical records for the applicant's husband; a letter from the applicant's husband's employer; letters in support of the couple; family photographs; and letters from the children's doctor and school. 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 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 March, 1993. *See Form I-130, Petition for Alien Relative; DS-230, Application for Immigrant Visa.*¹ The applicant's spouse filed a Petition for Alien Relative (Form I-130), which U.S. Citizenship and Immigration Services approved on September 7, 2004. *See Form I-130, Petition for Alien Relative.* The applicant departed the United States in November, 2005. *See Form I-601, Application for Waiver of Ground of Excludability.* The applicant's unlawful presence for one year or more after April 1, 1997, 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

¹ Although the applicant's Form I-601 indicates that she entered the United States without being inspected or admitted in June, 1998, this appears to be in error. *See Form I-601, Application for Waiver of Ground of Excludability.* This date is inconsistent with the earlier entry date provided on the Form I-130 and the visa application. *See Form I-130; DS-230.* The record also reflects that the applicant gave birth to a son in the United States on January 17, 1997 and married her husband on June 27, 1998 in California, events which are inconsistent with the June, 1998, entry date noted on the Form I-601. *See Birth Certificate for [REDACTED]; Marriage Certificate.*

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 44-year-old native of Mexico and citizen of the United States. *See Certificate of Naturalization for* [REDACTED] dated Sept. 17, 2001. The applicant and her husband have been married for 11 years, *see Marriage Certificate*, and they have two U.S. citizen children, *see Birth Certificates for Angeles and* [REDACTED]. The applicant has a son from a previous relationship. *See Birth Certificate for* [REDACTED]. The three children live with the applicant in Mexico. *See Letter from* [REDACTED]. The applicant’s spouse asserts that he is suffering extreme medical, emotional, and financial hardships as a result of the denial of the waiver.

The record reflects that the applicant's husband has Hypertension, Diabetes Type 2, and Hyperlipidemia. *See Letter from [REDACTED], Medical Records for [REDACTED]*. Mr. [REDACTED] treating physician states that [REDACTED] needs help with monitoring his diet and medications [and] his glucose testing," and that "it is imperative that his wife have authorization to care for him." *Letter from [REDACTED]*. [REDACTED] states that he "feel[s] alone and ill," and that the separation from the applicant has made him feel worse. *See Declaration of [REDACTED]*. The record also reflects that the applicant's two sons have asthma. *See Letters from [REDACTED]*.

Regarding emotional hardship, the applicant's spouse states that he is "distressed and anguished" without the applicant, as he is used to seeing and conversing with her every day. *See Declaration of [REDACTED]*. Mr. [REDACTED] notes that since their marriage in 1998, they had never been apart, and that the separation has had grave consequences for the family. *Id.* He also claims that he has had difficulty sleeping at night due to the problems caused by the separation from the applicant. *Id.* He worries about the applicant, and "live[s] anguished thinking of [his] wife, and all the danger she's living in Mexico without [him] by her side." *Id.* [REDACTED] employer states that [REDACTED] "has been under a mountain of stress caused by personal family problems that have affected him physically and at work," and notes that "he has lost weight since he has been separated from his family." *Letter from [REDACTED]*

Regarding economic hardship, the record reflects that [REDACTED] has been employed by [REDACTED], since 1984, and that he has worked as a ranch supervisor and tractor driver. *Id.*; *Report of Occupational Injury*. Although the record lacks information regarding his income and expenses, [REDACTED] states that it is very difficult to maintain a household in the United States and in Mexico. *See Declaration of [REDACTED]*. Additionally, [REDACTED] fears that the applicant could become a kidnapping victim in Mexico if people find out that he sends money to her from the United States. *Id.*

Although the record shows that separation from the applicant has caused various hardships to the applicant's husband, the evidence in the record is not sufficient to demonstrate that the hardship is extreme. First, although [REDACTED] has documented a number of chronic medical conditions, the evidence in the record does not indicate that these conditions are particularly severe, that his prognosis is guarded, or that he has been unable to care for himself. Accordingly, the evidence does not support a finding that [REDACTED] suffers from severe medical hardship as a result of the separation from the applicant. Second, while the emotional hardship of separation is apparent from [REDACTED] declaration, the applicant did not provide medical records, probative testimony, or other evidence to show that the psychological hardships faced by [REDACTED] are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Third, without evidence of the applicant's income and expenses, the AAO cannot conclude that family separation has caused extreme financial hardship to [REDACTED]. Further, a showing of economic detriment generally is not sufficient to warrant a finding of extreme hardship. *See Hassan, 927 F.2d at 468*. Finally, any hardships faced by the applicant and her children as a result of family separation are not calculated in the extreme hardship analysis, except to the extent that these hardships impact [REDACTED]. While [REDACTED] worries about the health and safety of his family in Mexico, the

evidence in the record does not indicate that the impact on [REDACTED] renders his hardship extreme.

Regarding relocation, the evidence in the record is insufficient to show that [REDACTED] relocation to Mexico would cause him extreme hardship. [REDACTED] states that he would not be able to move to Mexico because he would not be able to find a good job. *See Declaration of [REDACTED]* [REDACTED]. Because of his limited education, [REDACTED] claims that he would not be able to find employment that would allow him to support the family. *Id.* However, because the record lacks evidence regarding [REDACTED] income and expenses, as well as any supporting evidence regarding the prospect of future employment in Mexico, the AAO cannot conclude that the financial impact of relocation would cause extreme hardship. Additionally, the applicant's spouse has not presented any evidence, such as detailed testimony or documentation, that he would suffer from a lack of appropriate medical care in Mexico. *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). Similarly, the record lacks evidence regarding [REDACTED]'s family ties to U.S. citizens or lawful permanent residents in the United States, his family ties in Mexico, and any evidence regarding relevant country conditions in Mexico. Accordingly, the record lacks sufficient evidence to support the applicant's contention that relocation to Mexico would cause extreme hardship to her spouse.

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 Perez, 96 F.3d at 392; 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 her 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.