



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
CDJ 2004 764 315

Date: DEC 04 2009

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:

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, appearing to read "Perry Rhew".

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 his 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 September 7, 2006. The applicant filed a timely appeal.

On appeal, counsel states that [REDACTED] was a foster child, and is emotionally and psychologically dependent upon her husband. She states that [REDACTED] does not have a nuclear family to support her. Counsel states that [REDACTED] has concluded the Foundation Year for the Masters in Social Work program at the University of Southern California and will not be able to complete her studies without the emotional and financial support of the applicant. Counsel states that [REDACTED] does not speak, read, or write in Spanish and if she moved to Mexico would not be able to find employment due to the language barrier and her education would be wasted.

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.

(iii) Exceptions

(I) Minors

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection. He accrued unlawful presence from May 27, 2000, the day he turned 18 years old, until October 2005, when he left the United States and triggered the ten-year-bar, rendering him 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), which 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 section 212(a)(9)(B)(v) waiver requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not a consideration under the statute, and 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 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 letters by the applicant, the letters by her academic advisor and concentration coordinator, the Bachelor of Arts degree, the grade report, and other documentation.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant’s spouse must be established in the event that she remains in the United States without the applicant, and alternatively, if she 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.

Collectively, the letters in the record by _____ state the following. She was born in 1982 and immigrated to the United States in 1989. Her mother and younger brothers live in Mexico. She was placed with foster parents for two years because her father was an alcoholic. She does not now see her father very often. She is presently attending a full-time master’s degree program in social work in California and her only source of income and emotional support is her husband. She would be unable to obtain employment as a social worker in her husband’s town if she moved to Mexico and would be unable to find a job because she does not read or write in Spanish. She has a high risk pregnancy and her doctor advised her to be on bed rest.

The letter dated April 13, 2006 by _____, _____ academic advisor, states that _____ informed her that she might have to drop out of the master’s in social work program due to financial struggles.

When the evidence in the record is considered collectively, the AAO finds that it fails to establish that _____ would experience extreme hardship if she were to remain in the United States without her husband. Although _____ states that she would be unable to complete her master’s degree program if she were to remain in the United States without her husband, there is no documentation in the record of _____ cost of tuition, books, or other school related expenses; or of the financial assistance the applicant contributed when he was in the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

_____ indicates that she is concerned about separation from her husband. 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”).

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 AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of family separation. The record before the AAO, however, fails to establish that the situation of ██████████, if she remains in the United States without her spouse, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by ██████████ 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 her husband to live in Mexico, in her letter dated August 17, 2006, ██████████ states that she would experience extreme hardship if she live in Mexico because she would not be able to complete her master's degree and would be significantly limited in obtaining employment in her field of study in view of the language barrier she would confront, and would be unable to find employment as a social worker in her husband's town. In the August 8, 2006 letter, ██████████ indicates that she is pregnant and living in Mexico with her husband and is seeing a doctor there. She states that her husband has been unable to obtain employment in Mexico because his birth certificate is with the U.S. consulate and that as an American it has been difficult for her to obtain employment in Mexico, especially since her doctor advised her to be on bed rest. She indicates that they are running out of financial resources and are no longer able to afford medical expenses.

The AAO finds that the evidence in the record is not sufficient to establish that ██████████ would experience extreme hardship if she were to join her husband to live in Mexico. In her August 8, 2006 letter, ██████████ indicates that her husband has been unable to obtain employment; however, she attributes his problem to not having immediate access to his birth certificate. ██████████ indicates in her August 8 letter that it has been difficult for her to obtain employment in Mexico because she is an American; however, she admits that her ability to find employment has been impacted by having to be on bed rest due to her pregnancy. ██████████ has provided no documentation to show that she would be unable to obtain employment in Mexico in her field of study due to a language barrier, and she has not explained why she is limited to employment in her husband's town. As the record shows that ██████████ is pregnant and living in Mexico with her husband, the AAO finds that it is not clear whether ██████████ intention is to complete her master's degree in the United States.

In considering the hardship factors both individually and collectively, the AAO finds that the 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 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.