



U.S. Citizenship
and Immigration
Services

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DEC 07 2009

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
(CDJ 2005 527 392 relates)

IN RE: [REDACTED]

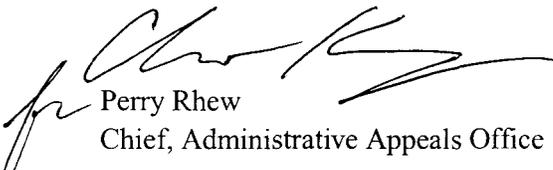
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 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 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 naturalized U.S. citizen and 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 reside with her husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated March 30, 2007.

The record contains, *inter alia*: a marriage certificate of the applicant and her husband, indicating they were married on November 29, 2003; a letter and an affidavit from a copy of naturalization certificate; a letter from employer; a copy of the notes from doctor's visit; tax documents, copies of bills, and other financial documents; copies of the couple's children's report cards; copies of photographs of the applicant and his family; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) 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 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.

In this case, the record shows, and counsel concedes, that the applicant entered the United States without inspection in September 2000 and remained until March 2006. *Brief in Support of Appeal from Denial of Waiver* at 1-2, dated May 18, 2007. The applicant accrued unlawful presence of over five years. She now seeks admission within ten years of her 2006 departure. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These factors 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.

In this case, the applicant's husband, [REDACTED] states that he and his wife have one child together, and that he has two stepchildren from his wife. [REDACTED] states his wife is a loving mother to their three children and that he would be lost without her. According to [REDACTED] they have assimilated to the lifestyle of the United States and are working towards their dreams of owning a home and watching their children grow into adults. [REDACTED] contends he is the primary economic provider of the family and that if he left his job in the United States, he could not find a similarly paid job in Mexico. He states that even though he was born in Mexico, moving back to Mexico to be with his wife "would be a severe psychological blow . . . since [he has] worked hard to become a[] U.S. citizen and [his] allegiance and roots lie in the United States." In addition, [REDACTED] states he has significant family ties in the United States as most of his family lives in this country. Moreover, [REDACTED] contends it would be very expensive for him to visit his wife in Mexico and he would be maintaining two households in two different countries. *Affidavit of* [REDACTED] dated April 13, 2007.

The record also contains an earlier letter from [REDACTED]. In this letter, [REDACTED] contends his wife has four children and that their youngest daughter "need[s] her medical exam due to that she [is] only 23 months old." [REDACTED] also claims his job is eighty miles away and that the children are by

themselves until he gets home in the evening. In addition, [REDACTED] states he is “in process of having a surgery.” *Letter from [REDACTED]* dated April 10, 2006; *see also 2006 U.S. Individual Income Tax Return (Form 1040)* (listing four children as dependents).

A two page copy of [REDACTED] medical records indicates that [REDACTED] has diabetes and had one surgery in the past. *Notes from [REDACTED]* dated September 8, 2006.

After a careful review of the record evidence, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if his wife’s waiver application were denied. The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family’s circumstances. However, if [REDACTED] decides to remain in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

With respect to [REDACTED] diabetes, there is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of [REDACTED] diabetes. Indeed, [REDACTED] himself makes no mention whatsoever of diabetes and there is no allegation he requires any assistance due to his diabetes. In addition, to the extent [REDACTED] states he was “in process of having a surgery,” *Letter from [REDACTED] supra*, his purported need for surgery is unsubstantiated by the record. The only medical record submitted states that [REDACTED] had one surgical procedure in the past. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

In addition, the record does not show [REDACTED] will suffer extreme hardship if he were to move back to Mexico, where he was born, to avoid the hardship of separation. His claim that he would suffer a “severe psychological blow” by moving back to Mexico does not rise to the level of extreme hardship. Regarding [REDACTED] claim that he will be unable to find comparable employment in Mexico, even assuming some economic hardship, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *see also 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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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 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.