



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
CDJ 2004 691 097 (RELATES)

Date:
DEC 08 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 (INA), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[REDACTED]

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 District Director, Mexico City, denied the instant waiver application. 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, the spouse of a U.S. citizen, the mother of at least one U.S. citizen child, and the beneficiary of an approved Form I-130 petition.

The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband and her child or children. The district director also found that the applicant had not established that failure to approve the waiver application would cause extreme hardship to her U.S. citizen spouse, and denied the application.

On appeal, counsel submitted a brief and additional evidence. Although counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(9)(B)(i) of the Act provides:

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 (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, 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.

On a Form DS-230 Application for Immigrant Visa, the applicant, who signed that form on October 5, 2005 and submitted it on October 9, 2005, stated that she had lived in Arlington, Texas since June 1, 2001. On her G-325A Biographic Information form the applicant, who signed that form on November 10, 2005, stated that she had lived in Texas from January 2001 through the date of that form.

The applicant's son's birth certificate shows that when he was born, on May 8, 2001, the applicant lived in Arlington, Tarrant County, Texas. The applicant's marriage certificate shows that she and her husband married on June 4, 2002 in Tarrant County, Texas. The joint 2003, 2004, and 2005

Form 1040, U.S. Individual Income Tax Returns of the applicant and her husband submitted show that they lived in Weatherford, Texas during each of those years.

In the brief filed on appeal, counsel stated that the applicant entered the United States during January 2001 without inspection and remained until November 2005, when she voluntarily departed to Mexico. The applicant submitted her Form 601 waiver application, which she signed on November 10, 2005, in Ciudad Juarez, in Mexico, which demonstrates that, by then, she had departed for Mexico. The record does not demonstrate that the applicant ever attained any legal status in the United States.

Although the date of the applicant's entry into the United States and the date she departed are unclear, the evidence in the record is sufficient to show that the applicant was unlawfully present in the United States from 2001 to 2005, a period greater than one year, and that she has since left the United States. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] 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 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.

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 child is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA has held:

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).

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 record contains some letters from relatives of the applicant that are essentially character references and contain no information about hardship that removal of the applicant would cause to her husband. Those letters will not be considered in the determination of whether the applicant is eligible for waiver.

The record contains a letter dated November 10, 2005 from the applicant's husband in Spanish without an English translation. Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). Because the applicant's statement was submitted without the required translation, its contents shall not be considered.

A letter dated September 7, 2006 from the applicant's husband's sister-in-law states that since the applicant departed the applicant's husband has been forced into a very busy schedule, as he works in construction and has a five-year old son to care for as a single parent.

The record contains a letter dated September 10, 2006 from the applicant. She stated that her husband was raised without his parents and without a family, and that this additional separation is very difficult for him. She stated that her husband's situation saddens him and, in turn, her, especially when she hears about her son who asks when she will return to the United States.

In a letter dated September 15, 2006, the applicant's husband stated that living separately from his wife has been difficult emotionally and economically. He stated that he is obliged to leave his son with other people while he works to pay his wife's expenses in Mexico and his own expenses in the United States. He asked that his yet unborn child be permitted to live with his older child, but stated that he does not want to send his older son to Mexico because the child would lose his opportunity to grow up speaking English and would lose his opportunity to receive an education. He stated that it causes him "an enormous heartache" that his son asks him daily when the applicant will come back to them, and that to continue to live life without the applicant would be terrible.

A letter dated September 16, 2006 from a friend of the applicant and her husband states that the applicant's husband loves the applicant and their children¹ very much, and would suffer if the family were separated.

The record contains a letter dated September 22, 2006 that represents that the applicant and her husband are the writer's family, but does not further describe the familial relationship. That letter states that the applicant's husband is obliged to send the applicant money to support herself in Mexico. It also states that the applicant's husband's work does not permit him to travel constantly so that he can see the applicant and their son, but does not indicate how often the applicant's husband might be able to travel.

The record contains six receipts with various dates from December 8, 2005 to March 3, 2006 showing that the applicant's husband sent amounts varying from \$100 to \$300 to the applicant on those dates.

The joint 2003, 2004, and 2005 Form 1040 U.S. Individual Income Tax Returns of the applicant and her husband show that they had total income of \$20,160, \$23,659, and \$23,213 during those years, respectively. Forms 1099 Miscellaneous Income reports and Form W-2 Wage and Tax Statements show that all of that income was derived from the applicant's husband's roofing subcontracting business and employment.

On appeal, counsel noted that the applicant and her husband decided that their child should remain in the United States so that the child could continue to attend school in the United States and "because [the applicant has] no financial means to care for the child in Mexico." Counsel provided no evidence that caring for the child in the United States is less expensive than caring for him in Mexico.

Counsel stated that the applicant's husband's job requires that he be absent from home during the day, and sometimes as late as 8 p.m. and that he must pay the child's aunt to care for him after school, "which is an additional and costly financial responsibility." Counsel provided no evidence of the cost of that care nor did counsel even allege its cost.

Counsel stated that the applicant previously stayed at home with the child and that applicant's husband will suffer because the applicant is now unavailable to care for their child in the United States and because the child is being raised without his mother.

Counsel stated,

"Further, it would be impossible for [the applicant's husband] to relocate to Mexico because of the lack of jobs and the high unemployment rate in the country. [The applicant's] husband and children were born in the United States."²

¹ The writer is apparently referring to the applicant's child and unborn child.

and

If [the applicant's husband] joined [the applicant] in Mexico, he would not be able to meet the family's most basic needs. It is extremely unlikely that [the applicant's] husband would be able to find comparable or adequate employment in Mexico to support his wife and children.

Counsel characterized the hardship of raising, supporting, and caring for the child in the United States without the applicant's assistance as being in addition to experiencing the normal hardship of the applicant being physically separated from his wife.

If the waiver application is not approved and the applicant must remain in Mexico, three options are open to the applicant and her husband. She may live in Mexico without her husband and their child; she may live in Mexico with her child but without her husband; or they may all live in Mexico. In order to prevail, the applicant must show that all of those three options would result in extreme hardship to her husband. Otherwise, she fails to show that denial of the waiver application would cause her husband extreme hardship.

The AAO will first consider the possibility of the applicant living in Mexico alone, without her husband and child. In that event, the applicant's husband would suffer some degree of hardship by being separated from her, some degree of hardship based on the separation of his child from the applicant, and some degree of hardship by being obliged to raise his child without her financial or logistical assistance.

The record does not show that the applicant's husband ever relied on the applicant's income, or that the applicant ever earned any income in the United States. Further, counsel stated that that applicant stayed home with the child when she was in the United States.

The record contains evidence that shows that the applicant's husband has been sending money to the applicant in Mexico. Although counsel asserted that Mexico has a high unemployment rate, he provided no evidence pertinent to that assertion and no other reason was given that she is unable to support herself there. Further, the applicant indicated that she lives with her mother in Mexico, which likely diminishes or even obviates some expenses.

The record contains the assertion that the applicant's child's aunt cares for her during workdays after school. Although it states that he picks up the child when he is done with work, thus implicitly asserting that this care is not provided in the home of the applicant's husband and child, it does not indicate how distant the applicant's husband's home is from the location where the child goes after school, presumably the aunt's home. Although counsel asserts that this arrangement causes

² Previously in the same brief counsel stated that the applicant and her husband had only one child and that she was pregnant with their second child in Mexico.

additional hardship to the applicant's husband, how much additional time this adds to the applicant's husband's schedule is neither demonstrated nor alleged.

The remaining consideration in this scenario is the emotional hardship that the applicant's husband would suffer from his separation and his child's separation from the applicant.

Separation from one's spouse, parent, or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases. Although counsel characterized the financial and logistical difficulties in raising the child without the applicant's assistance as being over, above, and distinct from the normal hardship of separation, they are not. Further, although the September 10, 2006 letter from the applicant states that her husband was raised apart from his parents, the record does not support her assertion that this significantly increases the burden of the current separation.

The evidence in the record does not demonstrate that, if the waiver application is denied and the applicant lives in Mexico, separate from her husband and child, the hardship factors inherent to this arrangement, when considered in total, will cause extreme hardship to the applicant's husband.

The AAO will now consider the hardship that will result if the waiver application is denied and the applicant lives in Mexico with her child, but without her husband. In that event, the applicant's husband will not be subjected to the logistical difficulties of raising the child by himself. There is no evidence that it would be more expensive than raising the child in the United States. The child would not, in that event, receive his education in the United States, and might not become fluent in English, which the applicant's husband stated were factors in the decision to keep him in the United States.

The applicant's husband would have the additional emotional hardship factor of being separated from his child, but would be spared the emotional hardship of the child being separated from its mother. Although the September 22, 2006 letter from a family member indicated that the applicant's husband's job does not permit him to travel "travel constantly," the possibility exists that the applicant's husband might be able to travel from his home in Texas to the applicant's location in Mexico on occasion, which might further diminish the hardship he would experience due to that separation.

When all of the hardship factors that will result to the applicant's husband if the applicant and the child live in Mexico and the applicant's husband lives in the United States are considered together, they do not rise to the level of extreme hardship.

The remaining scenario to be considered is the applicant's husband and child joining her to live in Mexico. Counsel has asserted, but provided no evidence to support, that the applicant's husband would be unable to obtain employment in Mexico, or, apparently in the alternative, unable to earn sufficient money to support his family there, or unable to obtain employment "comparable" to his current employment. The evidence appears to indicate that the applicant's husband operates a

roofing subcontracting company in the United States. There is no evidence in the record that suggests that he could not operate the same type of business in Mexico, or some other kind of business, or obtain employment otherwise, or that he would be unable, in any event, to earn a living in Mexico. That the employment available might not permit his family to maintain their current standard of living does not demonstrate that the applicant's husband would suffer extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996).

In the event that the applicant's husband and child joined her in Mexico, the applicant's husband would be spared the hardship of separation, the hardship of caring for his child without his wife's assistance, and the hardship of paying for child care.

The evidence submitted does not demonstrate that, if the waiver application is denied and the applicant, her husband, and her child live in Mexico, this arrangement will subject the applicant's husband to hardship factors which, when considered together, will rise to the level of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is

therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.