



U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

IN RE:

DEC 08 2009

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

The applicant is a native and citizen of Mexico who was found 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), having been unlawfully present in the United States for a period of more than one year and seeking admission within ten years of his last departure. He 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 remain in the United States with his U.S. citizen spouse and stepchildren.

The record reflects that the applicant is the beneficiary of a Petition for Alien Relative (I-130) filed by his spouse on or about June 13, 2003 and approved on October 1, 2004. The applicant filed an immigrant visa application (Form DS-230) on or about November 16, 2005 and an Application for Waiver of Grounds of Inadmissibility (Form I-601) on or about December 13, 2005 in Ciudad Juarez, Mexico.

In a decision dated August 25, 2006, the district director found that the applicant accrued unlawful presence in the United States from December 1998 until October 2005. The district director concluded that the applicant had failed to establish that the bar to admission would impose extreme hardship on the applicant's spouse and denied the waiver application accordingly.

On appeal, the applicant's spouse submitted a letter detailing her claim of hardship along with supporting documentation. Subsequent to filing the appeal, the applicant submitted additional letters and evidence to the AAO.

The record contains, among other documents, copies or originals of letters from the applicant's spouse, letters from the general manager and other employees of the hotel where the applicant's spouse works, a letter from the applicant's physician, letters from the applicant's spouse's landlord, phone bills, utility and other bills, pay statements, bank statements, dental records for the applicant's stepdaughters, and letters from friends and family members. The entire record was reviewed and considered in rendering this decision.

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-

(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 . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, 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.

....

(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 reflects that applicant entered the United States without inspection in December 1998 and accrued unlawful presence from that date until departing voluntarily in November 2005. The applicant is seeking admission to the United States. The applicant has not disputed his inadmissibility on appeal. The AAO therefore affirms the district director's finding that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 is not 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 U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also 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 (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 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 also held that

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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also 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). Only “in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that the applicant’s spouse is experiencing extreme hardship as a consequence of her separation from the applicant, but does not support a finding that the applicant’s spouse would face extreme hardship if she relocated to Mexico.

In her various letters, the applicant’s spouse claims she is suffering extreme hardship as a result of her separation from the applicant in the form of financial and emotional hardship. As to the financial hardship, the applicant’s spouse claims that in spite of loans she has received from her employer and friends, she has struggled to pay her rent, pay for her children’s orthodontic needs, or meet her other

financial obligations in the applicant's absence. She claims that the applicant had regular employment prior to her filing the Form I-130, and that the odd jobs he performed thereafter helped financially. She claims that she has no family nearby to help her with her children, is not eligible for public assistance, and is unable to receive additional training required for career advancement. She further claims that her daughter [REDACTED] requires oral surgery that she cannot afford. In a letter dated September 5, 2006, she indicated that she was "losing" her job and was unsure of her employment prospects. The evidence submitted by the applicant's spouse shows that she was past due in paying her rent in 2006 and that she has outstanding loans from her employer and friends. It also demonstrates that she may have been temporarily unemployed when her employer, the Redstone Inn, considered closing the hotel for approximately two months in 2006, and that her employer subsequently considered demoting her because of deterioration in her performance and attitude as a result of her family circumstances.

As to emotional hardship, the applicant's spouse claims that she is suffering from depression as a result of separation from the applicant, difficulties in raising her children by herself, and financial troubles. The applicant claims, in particular, that the applicant was more successful than she is in controlling the behavior of her children, and that her daughter [REDACTED] behavioral problems have resulted in threats from a neighbor and calls to the police. The evidence, which includes a letter form [REDACTED] and detailed assertions by family and friends, confirms that the applicant is suffering from depression and has been prescribed Prozac to treat this condition, but few details concerning the severity of the applicant's condition have been provided.

The AAO acknowledges that the applicant is experiencing hardship. The record fails, however, to demonstrate that all the hardships described by the applicant's spouse are the result of the applicant's inadmissibility. For instance, though the applicant's spouse asserts that her husband contributed to the family financially before his departure, the record lacks evidence detailing his employment and the amount of his financial contribution. The applicant's spouse also does not address the applicant's current financial circumstances in Mexico, and whether he is able to continue his financial contribution. The AAO acknowledges that the applicant's assistance in caring for his stepchildren may have provided and could prospectively provide a benefit to his spouse, allowing her to maintain her employment at an optimum level. But the evidence also reflects that the applicant's spouse's employment has provided her with insufficient funds to meet her stated financial obligations. The record does not show that the applicant's absence is the cause of all of the applicant's spouse's financial hardship, or that his return would result in the complete elimination of this hardship. The applicant's spouse also did not provide evidence to substantiate her claim that she is ineligible for public assistance. Nevertheless, the AAO notes that much of the hardship described by the applicant's spouse and demonstrated in the record can be attributed to the applicant's absence. The applicant's spouse's psychological condition appears to be severe enough to have negatively impacted her job performance and her ability to adequately care for her children. The record reflects that the hardships experienced by the applicant's spouse are increasing in severity as a result of the applicant's continuing inadmissibility. The AAO therefore finds that this inadmissibility will result in extreme hardship if the applicant and his spouse remain separated.

However, the AAO finds that applicant has not demonstrated that his spouse will suffer extreme hardship if she joins him in Mexico. In an undated letter, the applicant's spouse claims that moving to Mexico is not an option because she and her children have never lived in Mexico, the children do not read or write Spanish, and they will not be able to continue their education there. The AAO notes, however, that the applicant's spouse is a native of Mexico. She has not addressed her family ties there, but the record reflects that she lacks family ties to the United States. There is no evidence in the record showing the applicant's living conditions in Mexico, or otherwise demonstrating the conditions the applicant's spouse is likely to face if she moves there. The applicant's stepchildren may experience some hardship in Mexico because they do not speak Spanish, which in turn may result in some hardship to the applicant's spouse, but the record does not adequately address this hardship or show that this hardship will result in unusual hardship to the applicant's spouse that rises to the level of extreme hardship.

Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence that she would experience extreme hardship in Mexico. *See Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 failed to establish extreme hardship to his U.S. citizen spouse as required 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 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 rests 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.