



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
CDJ 2004 751 518 (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: 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 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,¹ the mother of a U.S. citizen son, 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 son. 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, the applicant's husband submitted additional evidence and asserted that the evidence in the record demonstrates that denial of the waiver application will cause him extreme hardship. Although the applicant and her husband 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 the Form I-130 the applicant's husband, who signed that form on May 5, 2004, stated that the applicant entered the United States without inspection during February 2001.

The record contains a Form DS-230 that the applicant signed on July 27, 2005, in which she stated that she had lived in California from February 2001 through the date of that application. In a G-325A

¹ The applicant's husband claims U.S. citizenship by birth, which claim is supported by his birth certificate. Although the birth certificate of one of the applicant's son's states that the applicant's husband was born in Mexico, the AAO believes this to be a typographical error.

Biographic Information form that the applicant signed on July 28, 2005 she confirmed that she had lived in California from February 2001 through July 2005.

The applicant's marriage license confirms that she and her husband were married on August 30, 2003 in Riverside, California. Her son's birth certificate shows that she gave birth in Moreno Valley, California on February 6, 2004.

The applicant submitted her waiver application in Juarez, Mexico on July 28, 2005, which indicates that, by that time, she had left the United States. In a letter dated April 3, 2007, the applicant's husband stated, "My wife . . . departed [the United States] voluntarily on [sic] March 2005." The record does not demonstrate that the applicant ever attained any legal status in the United States.

The evidence in the record is sufficient to show that the applicant was unlawfully present in the United States from February 2001 to March 2005, a period longer 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 an undated letter from the applicant's husband that was submitted with the Form I-601 waiver application. In it, he stated that he would not want his family to be separated, and that if the applicant remained in Mexico and their son resided in the United States, he would be unable to work full-time because he would be obliged to care for his son. He stated that if the family is so divided between Mexico and the United States he will be heartbroken, lonely, and depressed and his son will grow up without his mother's love.

The record contains a letter dated September 26, 2006 from the applicant's husband. In it, he stated that prior to his marriage he drank alcohol and disregarded traffic regulations, but that living with her has reformed him. He stated that living without his wife and child has caused him anxiety, stress, depression, insomnia, and even suicidal ideation. He provided no evidence from mental health professionals nor any other evidence to corroborate his claim of emotional distress or to quantify that distress.

He further stated that while in the United States his son had only ordinary health problems, and that in Mexico he has routinely been seriously ill.

The record contains documentation in English pertinent to the applicant's son's medical care while he lived in the United States. Those documents show routine tests and routine results. Those documents appear to support the assertion that the applicant's son was then in essentially good health.

The record contains other medical documents that are in the Spanish language without an English translation. The applicant's husband stated, in his September 26, 2006 letter, that his son is "getting sick very easily [in Mexico] because of malnutrition" and that among the Spanish-language documents submitted is,

. . . a letter from [his son's] doctor in Mexico stating that [the son] was being attended there and has had constant visits with him due to having breathing problems along with other health problems.

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). The medical documents submitted in Spanish without the required translation shall not be considered.

In a letter dated December 12, 2005 the applicant's husband stated,

Living without [my wife and child] has put me in a state of depression which resulted in the loss of my previous job ongoing to a financial downfall [but] I was able to get back on my feet and found a new job anticipating the return of my wife and son.

He further stated,

. . . my son has had trouble getting accustomed to the sudden change in foods and climate which has resulted in his weakening health. My wife explained that the doctors their [sic] refuse to give my son the full medical attention he needs because they are in no position to risk taking full responsibility for a patient from out of state.

That letter was not accompanied letters from mental health professionals or by any evidence that the applicant's husband has been depressed or, if so, the gravity of that depression. It was not accompanied by any evidence that the applicant's husband was terminated from his employment or that, if he was, it was as a result of his alleged depression. The record contains nothing to clarify the assertion that doctors in Mexico are unwilling to fully treat patients from out of state because of being unwilling to take full responsibility for them.

In a letter dated July 10, 2006 the applicant's husband stated that he is concerned about his son, whose medical condition, he said, is severe. He further stated that the health care available to his son in Mexico is inferior to what he was receiving, and would receive, in the United States. That letter was not accompanied by evidence that the applicant's son has a severe health condition, that he is receiving inadequate medical care, or that adequate health care is unavailable in Mexico.

In a letter dated March 29, 2007 the applicant's husband stated that he has not been well emotionally or mentally since his wife returned to Mexico, and that he has had financial difficulties. In a letter dated April 3, 2007 the applicant's husband stated that his wife's absence has caused him extreme emotional, financial, and mental hardship.

The record contains printouts of web content in Spanish without the required English translation. A note from the applicant's husband states, "Proof of the extreme violence occurring in Apatzingan, Michoacan." In his September 26, 2006 letter the applicant's husband characterized that web

content as showing that various atrocities have been committed in Mexico, including one 35 miles away from the location of his wife and child. Again, pursuant to 8 C.F.R. 103.2(b)(3), those documents will not be considered.

The record contains receipts showing that the applicant's husband transmitted money to her in Mexico. The record contains airline ticket receipts showing that the applicant's husband traveled to Mexico on several occasions. In his September 26, 2006 letter, the applicant's husband characterized those receipts as proof that he was obliged to travel to Mexico to be with his son when his son became seriously ill. The AAO notes that they show only that he paid airfare to Mexico.

The record contains photocopies of telephone bills. A note submitted with those bills, and apparently written by the applicant's husband, describes them as "Proof of having to call every day to ensure their safety and that they are staying in Apatzingan, Michoacan." The AAO notes that those telephone bills show that the applicant's husband called Mexico regularly, but not that his wife and child are in danger.

In analyzing the hardship that the applicant's absence causes her husband, two scenarios must be considered. The applicant must show that if she remains in Mexico and her husband remains in the United States, with or without their son, this arrangement would cause her husband extreme hardship. She must also show that if she remains in Mexico and her husband joins her there to live, he will suffer extreme hardship. The AAO will first consider the scenario of the applicant remaining in Mexico and her husband remaining in the United States.

The applicant's husband has stated that his wife's absence has caused him financial hardship. In support of that assertion, he provided receipts showing that he sent her money in Mexico. The loss of any income necessarily causes some hardship. The issue in this matter, however, is whether the amount of money he is obliged to send to his wife and child is causing him hardship which, when considered together with the other hardship factors in this matter, causes the applicant's husband extreme hardship.

The record does not contain any evidence of the applicant's husband's total income. The record does not contain any evidence of the applicant's husband's recurring expenses. The record contains some cash transmittals showing discreet amounts the applicant's husband sent to her in Mexico on specific dates, but no evidence pertinent to the amount she needs to support herself and her child adequately. The record does not show whether the applicant is obliged to lease quarters specifically for her and her child, or whether she is living with one or more family members.²

The evidence in the record is insufficient to show that if the waiver application is not approved, the applicant's husband will suffer financial hardship which, when combined with the other hardship factors in this case, will rise to the level of extreme hardship.

² Evidence in the record shows that the applicant was born in the Mexican state of Michoacan. Other evidence shows that she now lives in that state.

The applicant's husband has asserted that, if his wife is unable to return to the United States he will suffer extreme emotional hardship. A factor he emphasized in making that assertion is his son's allegedly poor health as a result of living in Mexico.

The various statements of the applicant's husband are the only evidence in the record pertinent to that son's alleged ill health that this office may consider. Although the statements by the applicant's husband are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)).

Another factor the applicant's husband emphasized as affecting him emotionally is the danger his wife and son are allegedly in as a result of living in Mexico. As was noted above, the web content in Spanish may not be considered. Even if, as the applicant's husband asserts, it shows that atrocities occur in Mexico, that would be insufficient to show that the applicant and her child are in danger. The closest incident of violence to which the applicant's husband referred was allegedly within 35 miles of the applicant and her child. Even if the applicant's husband had demonstrated that the location where the applicant and her child live is unacceptably dangerous, that would not demonstrate that the applicant and her child are unable to leave that area for a safer location inside Mexico, absent a showing that the violence is directed at the general public rather than otherwise targeted. In any event, the evidence in the record does not demonstrate that the location in Mexico in which the applicant and her child live is sufficiently dangerous to cause the applicant's husband anxiety on that account.

The applicant's husband has stated that he has suffered from depression and anxiety since his wife departed the United States. Again, the record contains no evidence, from mental health professionals or otherwise, to confirm that emotional distress or to characterize its severity. The AAO assumes that, in a typical relationship, the absence of a spouse will occasion a degree of hardship. The issue in this case is whether the absence of the applicant causes mental or emotional hardship to the applicant's husband which, when combined with the other hardship factors in this case, rises to the level of extreme hardship. The applicant's husband's assertions are insufficient to sustain the burden of proof on that issue. The evidence in the record does not demonstrate that, if the waiver application is not approved, the applicant's husband would suffer mental or emotional hardship which, when combined with the other hardship factors in this case, would rise to the level of extreme hardship.

In his earliest letter, the applicant's husband asserted that he would be unable to raise his son in the United States without the applicant's help because he would have to care for the child personally and would not be able to hold a full-time job. The applicant's husband has not revealed his living situation in the United States. Whether he lives by himself, or with family, or with friends, and whether he lives near family and friends is all unknown to the AAO. The applicant's husband's annual salary, the amount of his annual income, and the amount of his disposable income after recurring expenses are also unknown. The AAO is unable to determine, from the evidence in the record, whether the applicant's husband is able to afford domestic help or daycare, or whether

friends or family are able to care for his child while the applicant is gone. Other than the applicant's husband's assertion, the record contains no evidence that the applicant's husband would be unable to raise his child in the United States, if he and his wife chose that course of action. Further, the applicant's husband has implied that living in the United States would assuage the applicant's son's alleged health problems.

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.

Separation from one's spouse 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.

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 spouse faces extreme hardship if the applicant's waiver application is not granted and he remains in the United States, with or without his son. Rather, the record suggests that, in that event, he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties that typically arise when a spouse is removed from the United States. The remaining scenario to consider is whether the applicant's husband would suffer extreme hardship if the applicant remained in Mexico and the applicant's husband departed the United States to live with the applicant in Mexico.

The applicant and her husband provided no evidence pertinent to hardship the applicant's husband might suffer if he went to Mexico to live. Therefore, the applicant and her husband have not demonstrated that, if the waiver application is denied and the applicant's husband joins her to live in Mexico, he would suffer extreme hardship.

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.