



U.S. Citizenship
and Immigration
Services

H₂

DEC 09 2009

FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date:
CDJ 2004 821 731 (RELATES)

IN RE:

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).

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. The matter 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. She was found to be inadmissible to the United States pursuant to 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 and seeking admission within 10 years of her last departure from the United States. The applicant 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 return to the United States to join her U.S. citizen spouse.

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the denial fails to discuss any of the specific hardship factors particular to the applicant's case. Counsel states that the denial does not consider the applicant's spouse's advanced age and dependency on the applicant. Counsel states that the applicant's spouse has submitted a detailed affidavit addressing the many factors causing him to suffer extreme hardship due to his separation from the applicant and his stepdaughter.

In support of the application, the record contains, but is not limited to, an affidavit from the applicant's spouse.¹ The entire record was reviewed and considered in rendering a decision on the appeal.

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-

....

(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.

¹ The record also contains a letter from the applicant's spouse, dated November 9, 2005, which was originally filed with the waiver application. The letter is written in Spanish without an accompanying English translation. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

....

(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 shows that the applicant entered the United States without inspection in 1988. The applicant remained in the United States until departing on November 5, 2005. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until November 5, 2005. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of her November 5, 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of her last departure.

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. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 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 United States 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.

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).

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 contains an affidavit from the applicant's spouse, dated December 5, 2006, which states that he was born on September 8, 1927 in Mexico and has lived in the United States since 1955. He states that he naturalized to become a U.S. citizen in 1982. He states that he has nine children who reside in the United States and numerous grandchildren and great-grandchildren. He states that his closest relative is his oldest daughter who lives 50 miles away from him. He states that he had a complete left knee replacement because he could no longer walk on his knee. He states that he suffers from high blood pressure and gastritis for which he takes medications. He states that he lives on social security income and a pension from Midwest Operating Engineers Union of around \$900 a month. He states that his life has become very difficult for him since the applicant left the United States in November 2005. He states that it is dangerous for him to travel to Mexico to visit his wife at his age. He notes that on one trip he was involved in a traffic accident causing a total loss of his vehicle. He states that he pays for the applicant's rent, utilities, food and other expenses. He states that it costs him \$50 per week in gasoline expenses to visit the applicant. He states that he is living a very lonely life without the applicant. He states that he and the applicant love each other and need each other. He states that he cries himself to sleep sometimes. He states that he worries that as he gets older he will be alone, uncared for, and placed in a rest home. He states that he worries about his stepdaughter who is residing with the applicant in Mexico. He states that the loss of his ability to help his stepdaughter go to college has hurt him as if she was his own child.

The AAO has reviewed the applicant's spouse's assertions of medical and financial hardship and finds that they are not demonstrated by the record. The applicant has not submitted any medical documentation illustrating his medical conditions and resulting limitations on his daily activities. Further, he not submitted evidence of the remittances he sends to the applicant. Nor has he shown his household expenses and other evidence of financial hardship. Moreover, he has not discussed whether he could reside with any of his nine children to alleviate his claimed financial and medical hardships and concerns about loneliness in his advanced age. 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)). While the applicant's spouse's assertions are relevant and have been considered, they are of little value in the absence of supporting evidence.

The AAO recognizes that the applicant's spouse is suffering emotionally as a result of his separation from the applicant. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. While, in common parlance, the prospect of separation or involuntary 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 did not intend that a waiver be granted in every case where a qualifying relationship exists. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. 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).

Finally, the AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad. The applicant’s spouse asserts that he has lived in the United States since 1955. He states that he has nine children who reside in the United States and numerous grandchildren and great-grandchildren.

The AAO acknowledges that the applicant’s spouse will experience emotional hardship if he departs the United States and is separated from his family members. Family and community ties in the United States are considered factors contributing to a finding of extreme hardship. However, the applicant’s spouse has failed to submit documentary evidence to demonstrate such ties. The record does not contain copies of his children’s identity documents and proof of their residence in the United States. Nor does it contain evidence of the applicant’s spouse’s ties to his community. As previously stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. While the applicant’s spouse’s unsupported assertions are relevant and have been considered, they cannot be considered probative in the absence of supporting evidence.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant’s spouse, 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 has failed to establish eligibility for a waiver of inadmissibility 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 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.