

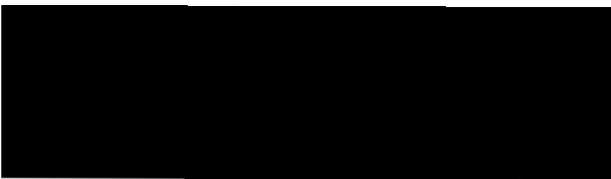
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FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date: NOV 03 2009

CDJ 2004 827 269

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:

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.

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 sustained, and the application will be approved.

The applicant, [REDACTED] is a native and citizen of Mexico. He 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 his 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 his U.S. citizen spouse, [REDACTED]

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

On appeal, the applicant asserts that she is going through a major depression that has made her very lonely. She states that she misses the applicant very much and cannot sleep at night. She states that she is constantly crying and is always worried about the applicant.

In support of the application, the record contains, but is not limited to, a letter from the applicant's spouse, photographs, medical documentation, a letter from an elementary school teacher, a letter from a social worker, a newspaper article, death certificates, employment documentation, and letters from the applicant's spouse's landlord, [REDACTED] and pastor. 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.

....

(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 December 2002. The applicant remained in the United States until departing in December 2005. The applicant accrued unlawful presence from December 2002 until December 2005. The applicant is attempting to seek admission into the United States within ten years of his December 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 his last departure. The applicant does not dispute his inadmissibility on appeal.

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 himself 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 reflects that the applicant wed [REDACTED] a U.S. citizen, on October 18, 2003. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant's spouse indicates that she has three children from a prior relationship who reside with her in the United States. Hardship to the children will be considered insofar as it results in hardship to the applicant's spouse.

On appeal, the applicant asserts that she is going through a major depression that has made her very lonely. She states that she misses the applicant very much and cannot sleep at night. She states that she is constantly crying and is always worried about the applicant. She states that when her son was murdered, the applicant was there for her. She states that she was really depressed because of her son's death. She states that the applicant is a responsible husband and father to her children. She states that her children miss the applicant and his absence has affected them. She states that her children are not doing well in school and are depressed. She states that she has been struggling with her job and cannot afford child care. The applicant's spouse made similar assertions in the letter she initially furnished with the waiver application, dated December 19, 2005. The applicant's spouse also noted in the letter that her children's father died in 2003. She also stated that she had to change her work schedule to part-time because she has no one to help watch her children.

As corroborating evidence, the applicant submitted the following relevant documentation:

- A letter from [REDACTED] Skyline Medical Office, Kaiser Permanente, dated December 1, 2006. The letter states, "[REDACTED] is under my care in my internal medicine practice. She has recently been diagnosed with major depression and is being treated with fluoxetine and clonazepam at bedtime as needed." The record contains pharmacy receipts reflecting that the applicant's spouse's prescriptions for fluoxetine and clonazepam were filled on December 2, 2006.
- A letter from [REDACTED] and [REDACTED] of the Hardcore for [REDACTED]. Their letter states, in part, "We met [REDACTED] through her son [REDACTED]. . . During the time of his stepfather's service some family had gathered together in a home, well we heard that their [sic] was an argument between a husband and his wife . . . [REDACTED] tired to intervene to help out and the husband got upset left and came back with a gun, started to shoot in the home, that's when [REDACTED] got in front of his sister to protect her and he himself got shot and killed that day. . . . Later [REDACTED] and [REDACTED] got married at our church . . . and the kids seem to be very happy, from what we saw the children seem to love [REDACTED]. . . Later once again this family had pain and sorrow when [REDACTED] mother passed away, this was very hard, especially on the children [REDACTED] leaned on her husband for strength [REDACTED] 10 year old son [REDACTED] is our god son, and we have noticed such a change in him, he seems so sad We believe that [REDACTED] needs her husband and the children need their father. . . ."
- A newspaper article from Rocky Mountain News entitled, "Man convicted of slaying of teen during rosary prayer." This article states, in part, "[REDACTED] killed [REDACTED] 19, when the teen tried to break up a fight between [REDACTED] and [REDACTED] wife . . . [REDACTED] had gone to a house . . . to pay his respects to his stepfather, who had died a week earlier." The record contains a

State of Colorado certificate of death reflecting that the applicant's spouse's son, [REDACTED] died on May 17, 2003 of multiple gunshot wounds to chest, abdomen and extremities.

- A letter from [REDACTED] OK Corral Camp, dated December 5, 2006. [REDACTED] letter provides, in part, "Since 1980, I have been [REDACTED] Big Sister through the Big Sisters of Colorado program. . . . She received her GED after the birth of her first child and has worked as a hair stylist for Great Clips supporting herself and her five children (and to a certain extent her two grandchildren) since 1994. . . . In 2003 she married [REDACTED] [REDACTED]. They married a year before her oldest child [REDACTED] was shot and killed. The death of [REDACTED] began a series of extraordinarily difficult times for [REDACTED]. To put it mildly his death put her over the edge. . . . Her oldest living child [REDACTED] is now in jail which has added incredible stress to her situation and intensified the need for Santiago to be in the US. . . . She has four living children ages 19 and younger and two grandchildren who all depend on her to financially sustain their lives. She has no possible way of achieving that end result on her own and needs her husband to achieve that objective. She has suffered mental and physical problems as a result of his absence. . . ."
- A letter from [REDACTED] Program Coordinator, [REDACTED], which states "The intent of this letter is to address the current situation of [REDACTED] and [REDACTED] in relation to their participation in grief support groups at [REDACTED] House. The children have been attending [REDACTED] House since December 2003 for the deaths of their biological father and older brother . . . recently, it has become apparent that all three children are having difficulty adjusting to the absence of their stepfather. [REDACTED] has not attend a support group in two months, stating that it makes him too sad. [REDACTED] and [REDACTED] have exhibited difficulty concentrating and frequently talk about missing their dad who is in Mexico. . . . The absence of their stepfather appears to be creating a certain level of distress and complicates their grieving process. . . ."
- A letter from the applicant's spouse's landlord, [REDACTED] which states, "[REDACTED] and her family have been absolute model tenants throughout the majority of their residency. She and her family are courteous, quiet, and respectful – both to the other tenants and to the property. Up until this year, she had always paid the rent and utilities on time. However, since her husband, [REDACTED] has been absent, [REDACTED] has had a very difficult time paying the rent and utilities in her usual timely manner. I have had to repeatedly give her additional days, and sometimes, weeks in order for her to make the full payments. . . ."
- A letter from [REDACTED] Great Clips for Hair, Denver, Colorado, which states, "[REDACTED] has been missing work and also bringing her children to work due to the fact of her having no babysitter. She has also had to cut back on her hours working only part time hours 25-30 hours a week, if this continues her pay will be cut to part time pay being that currently she is a full time employee."
- A letter from [REDACTED] Great Clips, which states, "[REDACTED] has been an employee of Holtzman Enterprises, Inc. since 5/30/1998. She has been a good employee and manager. . . . Due to her home needs and not being able to allocate enough time to work she

was demoted from Manager to Stylist. This brought a change to her income and further affected her need for financial balance with a husbands income. . . .”

The AAO has reviewed the evidence in the present case and finds 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 evidence in the record demonstrates that as a result of the applicant’s inadmissibility, his spouse has been diagnosed with major depression, suffered financial hardship, and faced disciplinary actions with her employer. The record shows that the applicant has encountered these hardships while she has had to support her children who are suffering from the loss of their biological father and separation from their stepfather. Furthermore, the emotional suffering experienced by the applicant’s spouse surpasses the hardship typically encountered in instances of separation because of her reliance on the applicant to assist her in coping with her son’s murder. The AAO therefore finds that the applicant has established that his wife would continue to suffer extreme hardship if they remained separated due to his inadmissibility.

Extreme hardship to the applicant’s spouse must also be established in the event that she accompanies the applicant to Mexico. The AAO finds that the foregoing documentation demonstrates the strong family and community ties the applicant’s wife has in the United States. The record reflects that the applicant’s spouse has four children and two grandchildren in the United States. The record indicates that at least three of the applicant’s spouse’s children reside with her in Denver, Colorado. The applicant’s spouse’s birth certificate shows that she and her parents are natives of Denver, Colorado. The record shows that the applicant’s spouse has been involved with the Big Sisters of Colorado program since 1980, where she met her Big Sister, [REDACTED]. The record further shows that the applicant’s spouse is actively involved with her church, Hardcore for [REDACTED] located in Denver Colorado. Finally, the record shows that the applicant’s spouse has relied on organizations such as [REDACTED] House, located in Denver, Colorado, to provide grief support to her children. The AAO observes that when considered in the aggregate, the applicant’s spouse’s community and family ties, if severed, would cause her to suffer emotional hardship that is beyond the hardship normally expected upon relocation to another country. Therefore, based on the totality of the evidence, the AAO finds that the applicant’s wife would suffer extreme hardship if she accompanied the applicant to Mexico.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The favorable factors in this matter are the extreme hardship to the applicant’s spouse and the passage of almost four years since the applicant’s immigration violation. The unfavorable factor in this matter is the period of the applicant’s unauthorized presence. The AAO notes that the applicant does not appear to have a criminal record.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's breach of the immigration laws of the United States, the severity of the applicant's violation is at least partially diminished by the fact that almost four years have elapsed since the applicant's immigration violation. The AAO finds that the hardship imposed on the applicant's spouse as a result of his inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained, and the application will be approved.

ORDER: The appeal is sustained.