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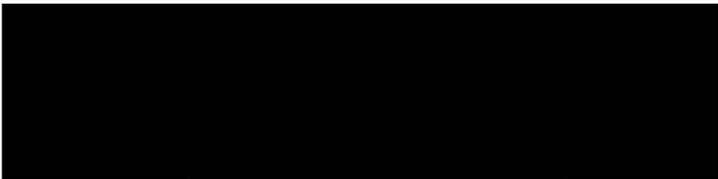


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
(CDJ 2004 767 586)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: NOV 04 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 (the Act), 8 U.S.C. section 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, as required by 8 C.F.R. 103.5(a)(1)(i).

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 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 Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. 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).

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 16, 2007.

On appeal, the applicant's spouse states that she is suffering extreme hardship, and requests additional time to submit evidence. As of this date, no additional evidence has been submitted and the record will be considered complete.

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 establishes that the applicant entered the United States without inspection in January 2000 and remained until he departed voluntarily in January 27, 2006. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under 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 or any children is not directly relevant to a determination of extreme hardship in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to the qualifying relative, the applicant's spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. 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 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.

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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she accompanies the applicant or 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 includes, but is not limited to: statements from the applicant's spouse; a statement from the applicant's step-daughter; medical records for the applicant's father-in-law; a letter from [REDACTED] concerning the applicant's step-daughter; travel receipts and itineraries for the applicant's spouse; and receipts for electronic money transfers sent to the applicant in Mexico.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

The applicant's spouse has submitted a statement asserting she misses her husband (the applicant) who provides emotional support for her family, and that she is unable to maintain the family's financial stability in the absence of the applicant. She also states that her father has been diagnosed with lung cancer and has only a short time to live, and that her daughter has been diagnosed with ovarian cysts and a potentially tumorous growth.

The AAO notes that the applicant's spouse has asserted she is unable to work due to a medical injury or condition, and that she is unable to pay the expenses necessary to support her family. However, the record does not support her assertions. The record does not contain any evidence of her medical condition or that she is currently unable to work and is receiving workman's compensation. Neither does it offer evidence of the financial obligations mentioned by the applicant's spouse. The applicant's spouse has specifically referenced certain obligations, but the record does not contain copies of these bills or other documentation, such as bank account statements. The AAO also acknowledges the applicant's spouse's statements that she is experiencing emotional stress due to the absence of the applicant, who provides moral and emotional support for her family. While the AAO recognizes that the applicant's spouse is experiencing emotional stress due to the applicant's absence, the record fails to demonstrate that the emotional impact on her rises above that normally experienced by the relatives of excluded aliens. Without sufficient evidence to determine the extent of her financial or emotional hardship the record does not establish that the applicant's spouse is experiencing extreme hardship.

The record contains a statement from an [REDACTED] who asserts that she is the applicant's stepdaughter and that she has been diagnosed with depression and is taking medication. The applicant's spouse asserts that her father has been diagnosed with terminal cancer and that her daughter is experiencing gynecological problems. The record does contain a doctor's letter for an [REDACTED] that indicates she has been diagnosed with depression and hospital discharge instructions for a [REDACTED] following a surgical procedure related to lung cancer. However, the AAO notes that the record fails to document either of these individuals' relationship to the applicant's spouse and it will, therefore, not consider how their medical conditions might affect her. Accordingly, an examination of the record as a whole fails to demonstrate that the applicant's spouse is experiencing extreme hardship based on the applicant's exclusion.

Extreme hardship to a qualifying relative must also be established whether he or she accompanies the applicant or remains in the United States. Neither the applicant nor his spouse has asserted that she would experience any hardship if she were to relocate to Mexico with him. As such, the record does not indicate that the applicant's spouse would suffer extreme hardship if she were to move to Mexico with the applicant.

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 will experience extreme hardship if the applicant is excluded. The AAO acknowledges that the applicant's spouse may struggle emotionally and financially if the applicant is refused admission. The record, however, does not distinguish her hardships from those commonly associated with removal and separation and they, therefore, do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions 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). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has 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 he 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.