



U.S. Citizenship
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Services

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FILE:

[REDACTED]
CDJ 2004 610021

Office: MEXICO CITY (CIUDAD JUAREZ) Date:

IN RE: Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v),
8 U.S.C. § 1182(a)(9)(B)(v), of the Immigration and Nationality Act.

ON BEHALF OF APPLICANT:

[REDACTED]

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).

Perry Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and 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 who was found to be inadmissible to the United States under 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.

The applicant is the spouse of [REDACTED], who is a U.S. citizen. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), of the Act so as to immigrate to the United States and live with her husband. The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated October 23, 2006. The applicant filed a timely appeal.

On appeal, counsel states that [REDACTED] wants his U.S. citizen daughters to live with him in the United States, but cannot afford childcare and would not be able to find a place that would keep them overnight while he is away on business. Counsel states that [REDACTED] is a truck driver who is on call and often sent to places at short notice. He states that [REDACTED] has been living in Mexico for one year and this has made things very difficult for [REDACTED]. Counsel states that [REDACTED] misses his wife and needs her in the United States to take care of their home and two daughters. He states that [REDACTED] cannot sleep at night worrying about the well-being of his wife and daughters who live alone in Mexico, a very dangerous place. Counsel states that [REDACTED] has the additional hardship of supporting his family because his wife has been unable to obtain employment. He states that [REDACTED] children have not been able to adjust to Mexico's climate and are constantly sick. According to counsel, [REDACTED] and his family live a distance of 14 hours from each other and [REDACTED] constant traveling to Mexico to ensure that his family is safe has proven to be an economic burden. He indicates that [REDACTED] cannot live in Mexico because he has no job there and would be forced to live in an underdeveloped country having minimal job opportunities and a minimal social network. Counsel states that [REDACTED] cannot bear to see his daughters living in another country and without his love and support. He states that [REDACTED] daughters are in need of a better life in the United States and that cannot happen without [REDACTED].

The AAO will first address the finding of inadmissibility.

Inadmissibility for unlawful presence is found under section 212(a)(9)(B) of the Act. That section provides, in part:

(B) Aliens Unlawfully Present

(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 . . . 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.

....

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection on August 2000 and remained in the country until April 2005. The applicant's 18th birthday was on June 24, 2002. She therefore accrued more than two years of unlawful presence, from June 25, 2002 to April 2005, and triggered the ten-year-bar when she left the United States, rendering her inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The waiver for unlawful presence is found under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which provides that:

(v) Waiver. – The Attorney General [now Secretary, 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 Attorney General [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 waiver 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 an applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(a)(9)(B)(v) of the Act. Thus, hardship to the applicant and her U.S. citizen children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). *Matter of Cervantes-Gonzalez* lists the factors considered relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors relate to an applicant’s qualifying relative and include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative’s family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative’s ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566.

The factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The trier of fact considers the entire range of hardship factors in their totality and then determines “whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In rendering this decision, the AAO has carefully considered all of the evidence in the record including [REDACTED] affidavit, prescriptions by [REDACTED] invoices, and other documentation.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant’s husband must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins the applicant to live in Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

[REDACTED] indicates that he has experienced financial hardship as a result of remaining in the United States without his wife. He states that paying for his family’s living expenses in Mexico “is putting a big strain on me” and that he does “not know how much longer I will be able to support them.” The record contains invoices his family incurred in Mexico for rent, utilities, cable, food, and doctor visits. [REDACTED] states in his affidavit subscribed on December 18, 2006, that his mother cannot live without his added income and that he needs to continue working so that his family “will not lose everything we have worked for.” In the Form I-130, Petition for Alien Relative, [REDACTED] indicates that he filed a Form I-130 for his mother and that she has been a permanent resident since 2002. He states that he wants his daughters to attend school in the United States and to be afforded very opportunity and that this cannot happen without their mother to take care of them while he works. However, because [REDACTED] has not provided any documentation of his income, the AAO cannot determine whether [REDACTED] is unable to meet his monthly financial obligations, including childcare, if he were to remain in the United States without his wife. 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 his affidavit [REDACTED] states that he cannot sleep well at night because he is constantly worried that his family will be harmed. He states that “[m]y wife is alone with two young daughters and that scares me. There is a lot of drugs, and violence in Mexico, so much that the police department cannot control the violence.” However, [REDACTED] has not provided any documentation of the rate of crime in Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*,

[REDACTED] conveys that the climate in Mexico is not suitable for his daughters and “they have been very sick since the first day they arrived in Mexico.” The letter by [REDACTED] states that the applicant’s oldest daughter is three years old and her youngest is fifteen months old. [REDACTED] states that in 2006 they have had rhinopharyngitis, earache and bronchial asthma, and will need otolaryngology and pulmonology evaluations due to their severe cases. She states that at present the applicant’s daughters are being treated by means of a bronchodilator and inhibitors of leukotrienes. The record contains prescriptions by [REDACTED] regarding patient visits. Although [REDACTED] daughters have health problems, the AAO finds that those problems are being adequately treated in Mexico.

[REDACTED] indicates that he has experienced emotional hardship as a result of remaining in the United States without his wife. Family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (“the most important single hardship factor may be the separation of the alien from family living in the United States”).

However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The record shows that [REDACTED] is very concerned about separation from his wife. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of family separation. However, the record before the AAO fails to establish that the situation of [REDACTED] if he remains in the United States without his wife, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by [REDACTED] as a result of separation from his wife, is unusual or beyond that which is normally to be expected from an applicant’s bar to admission. *See Hassan and Perez, supra.*

With regard to joining his wife to live in Mexico, [REDACTED] conveys that his wife has been unable to obtain employment in Mexico and that he has had to support her and his daughters. Counsel indicates that Mexico is an underdeveloped country with minimal job opportunities and a minimal social network. He states that "[REDACTED] has no job awaiting him in Mexico." However, there is no documentation in the record that establishes that [REDACTED] and his wife would be unable to obtain employment in Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

The factors presented do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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), 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.