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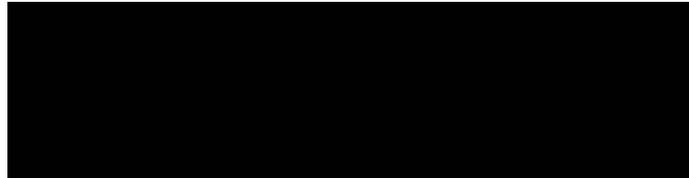
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE:



Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: NOV 09 2009

(CDJ 2004 782 459)

IN RE:



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:



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 and is the father of two United States citizens. 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 9, 2007.

On appeal, prior counsel for the applicant states that the District Director failed to properly consider the evidence in the record, and that the applicant has established that his spouse will suffer extreme hardship if he is excluded and she remains in the United States.

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 indicates that the applicant entered the United States without inspection in July 1999 and remained until he departed voluntarily in March 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 his 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 relocates with 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 spouse's grandmother; copies of birth certificates for the applicant's spouse and children; a copy of a marriage certificate for the applicant and his spouse; copies of court records related to an intoxicated driving citation on the applicant's record; and earnings statements for the applicant and his spouse.

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

On appeal, prior counsel claims that the applicant's children are suffering in his absence and that the older child is showing serious adverse medical conditions at day care. He also states that the

applicant's spouse is distraught and is suffering serious hardship as she has to deal with two very young children without the support of a father figure and is on the verge of a nervous breakdown.

The applicant's spouse asserts that she misses the applicant tremendously and further relates that the applicant's children and family would benefit from the applicant's presence. She explains the love she feels for the applicant, and describes the sleep problems and crying spells she is experiencing in his absence. She also states that she only has a part-time job and cannot afford to work more hours because of how expensive child care would be for her two children. The applicant's spouse also states that her children miss the applicant and are suffering emotional problems as a result of his absence.

The AAO notes the claims made by prior counsel regarding the hardship being experienced by the applicant's daughters, but does not find the record to support them. A statement from the applicant's spouse's grandmother indicates that she provides day care services for the applicant's children and that his older daughter has shown some social problems, specifically that she is very uncomfortable around large groups and very sensitive to loud noises, and is being medically tested. The record, however, contains no documentary evidence, e.g., medical reports or evaluations, to establish that the applicant's older daughter is experiencing any type of problem. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Moreover, the AAO notes that the applicant's children are not qualifying relatives for the purposes of this proceeding and the record does not address how any problems the applicant's older daughter may be experiencing in his absence are affecting her mother, the only qualifying relative. The AAO also finds the record to lack documentation that demonstrates the applicant's spouse is close to a nervous breakdown, as claimed by prior counsel. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO acknowledges the emotional suffering and fears expressed by the applicant's spouse in her statements. However, it does not find the record to contain sufficient documentation to establish that her suffering rises above that normally experienced by excluded aliens. While the record does contain income and tax documentation, this documentation does not establish significant debt or financial obligations on the part of the applicant's spouse. The record also fails to corroborate the costs of child care to which the applicant's spouse refers, although it indicates that the applicant's spouse's grandmother has provided child care for the applicant's children for the last three years. The record further lacks the documentation necessary to establish the emotional problems that the applicant's spouse states are affecting her children, as well as indicate how their problems are affecting her, the only qualifying relative.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. Neither counsel nor the applicant has asserted any impacts on the applicant's spouse if

she were to relocate with the applicant. As such, the record does not demonstrate that the applicant's spouse would suffer extreme hardship if she were to join the applicant in Mexico.

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 he is refused admission. The AAO recognizes that the applicant's spouse will experience hardship as a result of the applicant's inadmissibility. The record, however, does not establish that her hardship is beyond that commonly associated with removal and separation, and it does not, therefore, 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.