

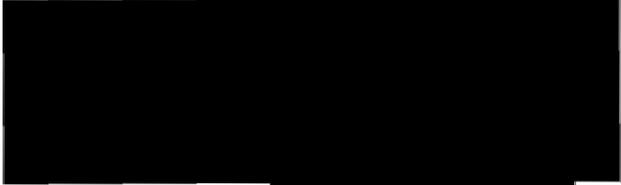


U.S. Citizenship
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FILE:



Office: MEXICO CITY (CIUDAD JUAREZ) Date:

CDJ 2004 723 903

IN RE: Applicant:



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:

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 or reopen, 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, 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's spouse, [REDACTED] is a U.S. citizen and his parents are lawful permanent residents of the United States. 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. The director concluded that the applicant had failed to establish that his 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 6, 2006. The applicant filed a timely appeal.

On appeal, the applicant and his wife state that their child is nine months old and the applicant has not been in the United States to support his wife. The applicant states that all of his family members live in the United States; some family members are lawful permanent residents and others will become U.S. citizens. He states that his parents have high blood pressure and diabetes and his living in Mexico is affecting them and their relationship with him. The applicant states that Mexico's low income level makes it very hard to find a job and wages are so low that their child's standard of living would be affected and he would not be able to provide for the medical and basic needs of his wife and son. He states that they have been struggling emotionally, economically, and physically for more than two years and have fallen into a state of depression. He indicates that they have experienced extreme hardship.

The AAO will first address the finding of inadmissibility.

Inadmissibility for unlawful presence is found under section 212(a)(9) 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.

Unlawful presence accrues when an alien remains in the United States after period of stay authorized by the Attorney General has expired or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in February 2002 and remained in the country until October 2003. He therefore accrued more than one year of unlawful presence from February 2002 until October 2003, and triggered the ten-year-bar when he left the country, rendering him 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). That section 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. Thus, hardship to the applicant and his U.S. citizen child will be considered only to the extent that it results in hardship to a qualifying relative, who in this case are the applicant’s U.S. citizen spouse and his lawful permanent resident parents. 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-Morales*, 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).

The evidence in the record consists of the October 25, 2006 letter by the applicant and his wife, medical certifications by [REDACTED] regarding the applicant and his wife, lawful permanent residency cards of the applicant's parents, birth certificates, letters by friends, letters by the applicant's wife, and other documentation.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's spouse must be established in the event that she remains in the United States without the applicant, and alternatively, if she 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.

In an undated letter submitted with the waiver application, [REDACTED] states that separation from her husband has been difficult and has caused her to "fall in a stage of depression." She states that because of her job and pregnancy she cannot travel to Mexico and that she is concerned her husband will miss sharing in her pregnancy. If her husband were with her, she states that she would be financially stable. [REDACTED] states in her January 27, 2006 letter that separation from her husband **is draining her physically and mentally and she needs his financial assistance.** The applicant's U.S. citizen son was born on January 1, 2006. [REDACTED]'s medical certification dated October 12, 2006, conveys that [REDACTED] **requires anxiety medication and antidepressants** and [REDACTED] recommends increasing family communication. [REDACTED] certification dated August 5, 2006, states that [REDACTED] has depression that is manifested by anorexia, loss of interest in people, anxiety, illness, and lack of concentration. [REDACTED] conveys that [REDACTED] will be treated with anxiety medication and antidepressants and therapy.

In her certifications dated June 25, 2006, [REDACTED] diagnosed the applicant with obsessive compulsive syndrome and prescribed the medications Effexor, Seropram, and Alprazolam. The letters by the applicant's friends commend his character and convey that the applicant is depressed about separation from his wife and child.

The record reflects that [REDACTED] is being treated by [REDACTED] in Mexico. There is no evidence in the record, other than her son's birth certificate, that indicates that [REDACTED] has been living in the United States; consequently, there is insufficient documentation in the record to demonstrate that [REDACTED] has been experiencing anxiety and depression due to separation from her husband.

The applicant and his wife indicate that they are very concerned about their separation. 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). *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).

The record conveys that [REDACTED] is concerned about separation from her husband. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of family separation. The record before the AAO, however, fails to establish that the situation of [REDACTED] if she remains in the United States without her husband, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by [REDACTED] 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 her husband to live in Mexico, the record conveys that the applicant departed from the United States in 2003. In his letter dated October 25, 2006, he indicates that it is very hard to find a job in Mexico and his wife and nine-month-old son would not be able to survive in Mexico as he would be unable to provide basic necessities. However, no documentation has been submitted into the record to demonstrate that the applicant 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*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Having carefully considered the hardship factors raised, both individually and collectively, the AAO finds that in this case those factors are not sufficient to establish extreme hardship to [REDACTED] if she were to remain in the United States without her husband and if she were to join him to live in Mexico. **Consequently, the factors presented do 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 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), 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.