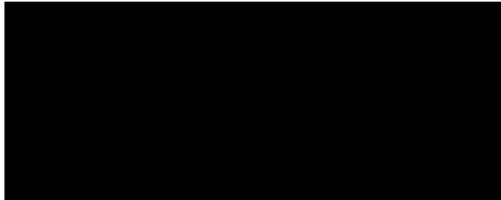




U.S. Citizenship
and Immigration
Services

H2



FILE:

(CDJ 2004 758 595)

Office: CIUDAD JUAREZ, MEXICO

Date: NOV 30 2009

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:

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 Officer in Charge (OIC), Ciudad Jaurez, 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 the son of a U.S. Citizen (USC) father and a Lawful Permanent Resident (LPR) mother. 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 OIC concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his USC father or his LPR mother, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 26, 2007.

On appeal, the applicant's father asserts that the OIC's decision is wrong and unjust, and that he and the applicant's siblings are experiencing extreme hardship based on the separation.

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 January 2004 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 is not directly relevant in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to a qualifying relative. 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 parents; a copy of the naturalization certificate for the applicant’s father; and copies of the LPR cards for the applicant’s mother and siblings.

On appeal, the applicant’s father asserts that both he and his wife, the applicant’s LPR mother, are suffering extreme emotional hardship due to the applicant’s exclusion. He states that his wife cries each time she speaks to the applicant on the telephone and is losing sleep. The applicant’s father also states that the applicant is a good person, and recounts his fears for the applicant who is residing in Cuxpala, Zacatecas, Mexico, a town he states is rife with crime and violence. The applicant’s mother states that it is impossible for her and her husband to live in peace if the applicant must live by himself, be exposed to all types of problems and have no one to help him make his decisions.

While the AAO acknowledges the concerns of the applicant's father and mother, hardship to the applicant is not relevant to a determination of extreme hardship in this proceeding. It notes that the record contains no documentary evidence that establishes the emotional impact of separation on the applicant's father or mother, the qualifying relatives in this case, or that their emotional hardship rises above that normally experienced by the relatives of excluded aliens. The record also fails to include any published country conditions reports to demonstrate the criminal activity and violence in Cuxpala, Zacatecas, which the applicant's father states are the basis for his concerns about the applicant. 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)). As such, the record does not establish extreme hardship to the applicant's parents if the waiver application is denied and they remain in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. The applicant's father does not assert any impacts on himself or his spouse if they were to join the applicant in Mexico. As such, the record does not indicate that the applicant's father or mother would suffer extreme hardship if they were to relocate with the applicant.

When considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the hardships described in the record do not support a finding that the applicant's USC father or LPR mother would face extreme hardship if he is refused admission. The AAO recognizes that the applicant's parents will suffer hardship as a result of the applicant's inadmissibility. The record, however, does not distinguish their hardship from that commonly associated with removal or exclusion 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 parents 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.