identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

H2

[redacted]

OCT 01 2009

FILE: [redacted] (CDJ 2004 688 227)

Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ)

Date: OCT 01 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:

[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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting 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 has one U.S. citizen child. 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 daughter, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 6, 2006.

On appeal, the applicant's representative asserts the applicant failed to realize the importance of submitting documentation to extablish extreme hardship, and is submitting documentation on appeal to establish that a qualifying relative will suffere extreme hardship.

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 1995 and remained until he departed voluntarily in October 2005. Therefore, the applicant was unlawfully present in the United States for over a year, from July 5, 1999, the date of his 18th birthday, until October 2005, and is now seeking admission within ten years of his last departure from the United

States. As the applicant accrued more than one year of unlawful presence 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. S*ee 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, the applicant's representative's brief; a statement from the applicant's spouse; photographs of the applicant and his spouse; country conditions materials on Mexico; letters from the applicant's and his spouse's employers, tax records and pay stubs for the applicant's spouse; utility invoices for the applicant's household; a statement from the applicant's father-in-law; birth certificates for the applicant's spouse and daughter; and a marriage certificate for the applicant and his spouse.

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

The applicant's representative asserts on appeal that the applicant's spouse is suffering from depression and anxiety due to the applicant's exclusion, and that as a single parent the applicant's spouse will suffer extreme financial hardship. The applicant's representative further asserts that the cost of traveling to Mexico to visit the applicant represents a financial burden on the applicant's spouse, and that, due to the sanitary, social and environmental conditions in Mexico, such travel causes extreme hardship to the applicant's spouse and daughter because they cannot obtain proper medical attention. The applicant's representative also notes that their house in Mexico has been broken into.

The AAO would note that the applicant's daughter is not a qualifying relative in this proceeding, and that any impact on her is not directly relevant to establishing extreme hardship. An examination of the record reveals that there is little evidence to support the applicant's representative's assertions. There is no evidence that the applicant's spouse has been treated by a psychologist, as asserted by the applicant's representative, or that she has been diagnosed with depression or any other mental health condition. Without any such evidence, the record does not establish that the emotional hardship she is experiencing rises above that normally experienced by the relatives of excluded aliens. The record does not contain any evidence such as receipts or travel itineraries verifying that the applicant's spouse has traveled to Mexico for visits with the applicant. Neither does it include documentary evidence to demonstrate that the applicant's daughter has had health problems in Mexico. While the AAO notes the applicant's representative's reference to the social and environmental conditions in Mexico, the record fails to adequately document that the applicant's spouse's travel to Mexico would result in extreme hardship.

The applicant's spouse asserts that the separation from her husband has been extremely hard, that her daughter misses her father, and that without the applicant's salary to supplement household income she has difficulty paying their bills, including babysitting, rent, electricity, gas, water, food, insurance, car fuel and other baby-related expenses. While the AAO acknowledges the difficulties asserted by the applicant's spouse, it would note that the record does not contain any documentary evidence of these financial obligations. As such, it cannot ascertain exactly what burden falls on the applicant's spouse. The record does contain evidence that the applicant's spouse has two jobs and resides with her father and mother. While this does not discount the hardship asserted by the applicant's spouse, it does indicate that she has resources to help mitigate the impact of the applicant's exclusion. Without documentary evidence to support her assertions, the AAO cannot determine the extent of these financial burdens and whether they would result in extreme financial hardship to the applicant's spouse.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant.

The applicant's representative asserts that the applicant's spouse has no immediate relatives in Mexico, and that the lack of adequate medical care in Mexico, as well as the political and economic conditions there, would result in extreme hardship on the applicant's spouse if she were to relocate with the applicant. The applicant's representative further states that the applicant's spouse is

employed at a very sound and secure job that she would lose if she relocated. The applicant's representative also references the U.S. State Department's Country Reports on Human Rights Practices on Mexico – 2005 to support her assertion that the applicant would be unable to find employment to support his spouse in the United States, that the applicant's spouse would be unable to find employment in Mexico if she relocated, and that the social and economic conditions in Mexico would create an extreme hardship for the applicant's spouse if she were to relocate. While United States Citizenship and Immigration Services (USCIS) notes the State Department's evaluation of country conditions in Mexico in terms of human rights violations, it does not find this report probative of the applicant's individual assertions or of the economic conditions or availability of healthcare in Mexico. The AAO also notes, as acknowledged by the Board of Immigration Appeals in *Matter of Anderson,* 16 I&N Dec. 596 (BIA 1978), that most countries will have a lower standard of living than the United States, and thus this factor does not establish extreme hardship. As the record is currently constituted, there is insufficient evidence that the applicant or his spouse would be unable to find employment in Mexico. Neither does the record establish that the applicant and his family would be unable to obtain medical care for health-related problems.

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 would face extreme hardship if he is refused admission. In this case, the record fails to establish that the hardships to the applicant's spouse, even when considered in the aggregate, rise above those commonly experienced by the relatives of excluded aliens. 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.