

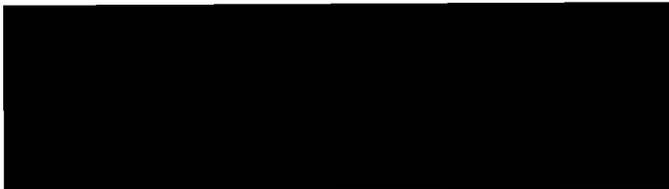
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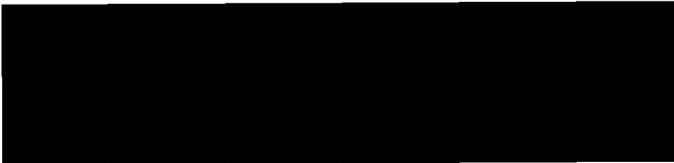
OCT 01 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act, 8 U.S.C. §§ 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 or reopen, 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, [REDACTED], 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 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 and seeking admission within 10 years of his last departure from the United States. The applicant 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), in order to return to the United States to join his U.S. citizen spouse, [REDACTED].

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the applicant's spouse is suffering from Type I Diabetes, hypertension and high blood pressure. In support of the application, the record contains, but is not limited to, a letter from [REDACTED] and statements from the applicant's spouse.

The AAO notes that counsel indicated that additional materials supporting the extreme hardship claim would be submitted within 30 days of filing the appeal. Similarly, on the Notice of Appeal (Form I-290B), counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. The Form I-290B was filed on September 7, 2006. As of the date of this decision, the AAO has not received any additional documentation. Therefore, the record will be considered complete for purposes of rendering a decision on the appeal.

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 shows that the applicant initially entered the United States without inspection in July 1995. The applicant remained in the United States until departing in October 2005. The director found that the applicant accrued unlawful presence from July 1995 until October 2005. The AAO notes that the director's assessment was incorrect because April 1, 1997 is the effect date of the unlawful presence provisions of the Act. The applicant accrued unlawful presence from April 1, 1997 until October 2005. The applicant is attempting to seek admission into the United States within ten years of his October 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of his last departure. The applicant does not dispute his inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *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 (BIA) 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 United States 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the

applicant or in the event that he or she 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.

Counsel asserts that the applicant's spouse suffers from Type 1 Diabetes. Counsel states that the applicant's spouse's condition is so severe that she must continuously maintain blood sugar levels and cooperate with doctors in order to ensure she is maintaining her health. Counsel states that the applicant's spouse suffers from hypertension and high blood pressure. Counsel states that the medicine often conflicts with her blood sugar maintenance, which requires medical intervention. Counsel states that the applicant's spouse has gone to the same doctor for 14 years. Counsel states that the applicant's spouse expressed fear about traveling to Mexico where she may be subject to environmental and social factors further impacting her health. Counsel states that the applicant's spouse maintains a strict diet, which is unavailable for her in Mexico. Counsel states that if the applicant's spouse were to travel to visit the applicant, it could only be for very short trips as she cannot be away from her physicians for lengthy periods of time.

The record contains a letter from the applicant's spouse, dated September 3, 2006, filed with the appeal. The applicant's spouse asserts that she has diabetes and cannot travel out or alone. She states that her illness has brought other impediments to her health such as neuropathy, high blood pressure, high cholesterol and kidney failure. She states that emergency visits and post recovery stays at the hospital have forced her to stop working for a couple of months. She states that she had to move back with her parents because it was difficult for her to sustain her economic life. She states that since 1991 she has been cared for by her physician, [REDACTED]. She states that her weekly visits to his office help [REDACTED] monitor her way of life. She states that she believes that the care and medicines she receives cannot be substituted in Mexico.

The record contains a letter from [REDACTED], written on a prescription notepad, dated September 2, 2006. [REDACTED] states that the applicant's spouse has been under his care since April 4, 1991. He states that the applicant's spouse continues under his care due to diabetes mellitus, hypertension, nephropathy and cellulitis of her first toe. The AAO notes that the record contains no other medical documentation related to the applicant's spouse's condition. For instance, there is no documentation related to her short and long term treatment plans, special dietary requirements, and prognosis. Nor is there any documentation related to the period of hospitalization she discussed in her letter. Further, there is no documentation related to the type of medical treatment and care available in Mexico. However, the AAO recognizes that the applicant's spouse is suffering from a number of chronic medical conditions that require consistent medical attention and treatment. The AAO acknowledges that the applicant's spouse's move to Mexico would, at least in the short-term, leave her without consistent medical care, and interrupt her long-standing relationship with her physician, [REDACTED]. Given these factors, it has been established that the applicant's spouse would suffer extreme hardship if she relocated to Mexico due to the applicant's inadmissibility.

As discussed, extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she 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 applicant's spouse asserts in her September 3, 2006 letter that she needs the

applicant's support to overcome her emotional, physical and economic struggles. She states that the distance between the applicant and herself has made it very difficult to conquer her goals and aspirations. She states that she would like to one day have a family with her husband. The record also contains an undated letter from the applicant's spouse, which was initially filed with the waiver application. She states in this letter that the refusal of the applicant's admission to the United States would be an economic strain on her and her family. She states that she would have to work in the United States to support her husband in Mexico. She states that her income is not enough to support both households and they would be forced to live in poverty.

The AAO finds that the applicant's spouse's assertions regarding the economic strain on her family are based on speculation alone. The record does not demonstrate that the applicant is unable to support himself in Mexico. No documentation has been provided to demonstrate that the applicant's spouse is sending the applicant remittances or otherwise supporting him in Mexico. Nor is there any documentation related to the applicant's spouse's employment, income and expenses. As such, the AAO does not have sufficient documentation to fully assess the applicant's spouse's financial situation. 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)). Although the applicant's spouse's unsupported assertions are relevant and have been considered, they can be afforded little weight in the absence of supporting evidence.

The AAO recognizes that the applicant's spouse is suffering emotionally as a result of her separation from the applicant. Her situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility 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 remains entirely 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.