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FILE:



(CDJ 2004 757 003)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

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 (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).

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. She 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 her last departure. She is married to a naturalized United States citizen. She 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 her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 7, 2006.

On appeal, counsel for the applicant states that the District Director applied the wrong standard and failed to consider all of the facts in denying the applicant's waiver application.

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 March 2000 and remained until October 2005. As the applicant accrued unlawful presence in the United States for over a year and is now seeking admission within ten years of her last departure, she 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, counsel’s brief; statements from the applicant and her spouse; numerous statements by friends and family of the applicant attesting to the emotional bond between the applicant and her spouse, as well as her kindness and character; a letter from the applicant’s spouse’s employer; tax returns; pay statements for the applicant’s spouse; documentation of health insurance coverage; photographs of the applicant, her husband and their extended family; copies of medical records in Spanish; educational certificates and reports for the applicant; a copy of the marriage certificate for the applicant and her spouse; and a copy of the applicant’s spouse’s naturalization certificate.

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

On appeal, counsel states that the applicant's spouse will suffer emotionally and psychologically if the applicant's waiver application is denied. Counsel asserts that the applicant is pregnant and suffering from seizures and that her spouse is experiencing extreme emotional hardship as a result of his fears that she is not receiving the care she needs. Counsel notes that, if allowed to return to the United States, the applicant would be covered by her spouse's health insurance and that her spouse would be able to monitor her health and that of their baby. The AAO notes that the record does contain several Spanish-language documents that appear to be medical in nature. However, the regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services (USCIS) be accompanied by a full English-language translation, which the translator has certified as complete and accurate, and, by the translator's certification, that he or she is competent to translate from the foreign language into English. As the Spanish-language documents in the record are not accompanied by translations, they will not be considered in this proceeding.

An examination of the record reveals that there is no documentation that establishes the applicant's pregnancy or that she suffers from any medical condition. Neither does the record contain evidence, e.g., an evaluation of the applicant's spouse by a licensed mental health professional, that addresses the emotional hardship that the applicant's spouse is experiencing as a result of his separation from the applicant. 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). As such, the record does not support counsel's claims regarding the emotional suffering of the applicant's spouse.

In his November 15, 2005 statement, the applicant's spouse states that he has lost sleep and weight as a result of his separation from his wife. He asserts that he has a back injury and that the applicant helps him with his therapy. He also states that he has suffered a nervous crisis and has constant and painful headaches. The applicant's spouse further reports that he has stomach problems and that the applicant provides him with healthy food. While the AAO acknowledges these claims, it does not find any documentary evidence in the record to support them. Therefore, the record does not establish that the applicant's spouse suffers from any medical condition or that he requires the applicant's care. 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)). Based on the record before it, the AAO does not find the applicant to have established that her spouse would experience extreme hardship if she is excluded and he remains in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. In this case, counsel asserts that the applicant's spouse has become accustomed to the United States, has strong ties to community and family, and that if he relocated to Mexico he would face horrible political and economic conditions, and would not be able to economically support his wife and baby. Counsel further asserts that the applicant and her spouse enjoyed a comfortable living in the United States and that, if the applicant's spouse relocated to Mexico, he would lose his job and his family would no longer be covered by his employment-based health insurance. The

applicant's spouse further states that, in Mexico, he would have trouble providing for his family because of his previously-noted back injury.

The record does not contain any documentary evidence supporting the counsel's assertions that the applicant's spouse would be unable to find employment in Mexico or that he would be unable to adjust to living there. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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 further notes that the uprooting of family, loss of employment, separation from friends and readjustment to a home country after having spent a number of years in the United States represent the types of hardships commonly created by the removal or exclusion of a family member from the United States. *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994). Further, a reduction in a standard of living or financial hardship, without more, does not constitute extreme hardship. *Matter of Ige*, 20 I&N 880 (BIA 1994). In the present case, the record does not document that either the applicant or her spouse would be unable to find employment in Mexico in order to provide for their financial needs. Neither does it document that the applicant's spouse has experienced a back injury that would prevent him from obtaining employment. Accordingly, the record fails to establish that the applicant's spouse would experience extreme hardship if he relocated to Mexico with the applicant.

An examination of the hardship factors in the record finds that, whether considered individually or in the aggregate, these factors do not support a finding that the applicant's spouse would face extreme hardship if she is refused admission. The AAO recognizes that the applicant's husband will suffer hardship based on her inadmissibility. However, the record fails to distinguish his hardship from that commonly associated with removal and 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 her 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 she merits a waiver as a matter of discretion. Therefore, the AAO will not address counsel's assertions concerning the exercise of discretion in this matter.

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.