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U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: CDJ 2004 744 494 Office: MEXICO CITY (CIUDAD JUAREZ) Date: OCT 02 2009

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 sustained.

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 naturalized citizen 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 her 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 20, 2006. The applicant filed a timely appeal.

On appeal, [REDACTED] states that he cannot live without his wife. [REDACTED] states that he has lived in the United States for 34 years and all of his immediate family and friends are here, and adjusting to Mexico's economy and culture would be difficult. He conveys that the salaries in Mexico are low and there are no available jobs, so their standard of living would be affected. He states that he does not have any relatives in Mexico and that his wife does not have relatives who can help her. [REDACTED] states that, "[w]e don't have any medical insurance in Mexico." He indicates that he has a steady job and joining his wife in Mexico is not an option for him as he "will suffer an arduous economic hardship if I have to leave my work and future endeavors." He states that the poverty-level wages and political and criminal climate in Mexico do not provide a viable option to relocate to Mexico. [REDACTED] states that he is 59 years old and has health problems, and would be emotionally hurt if separated from his wife. He states that he decided not to have children because he wants his children raised in the United States. [REDACTED] states that he has developed hypertension, hypercholesteremia, prostatitis, stress, and heartburn since he learned his wife must remain in Mexico. He states that as a result of his symptoms he has been unable to sleep well at night and his symptoms have adversely affected his employment. [REDACTED] conveys that his doctor recently diagnosed him with acute anxiety and depression due to his wife's absence and that he began taking medication because his body needs to sleep. He states that he works full-time and is constantly worried about the safety and well-being of his wife. The applicant submitted a physician's note, prescriptions, and his naturalization certificate on appeal. If the waiver is not granted, he states that paying his wife's rent and food will cause him economic 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.

....

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant admitted that she entered the United States without inspection on five occasions. In January 1989 she ran past border inspectors and was caught the same day at the San Clemente border patrol checkpoint and returned to Mexico. She entered without inspection the next day in January 1989 and remained until 1993. One month later she entered without inspection in 1993 and remained until 1995. She entered two weeks later without inspection and stayed until 1997. Lastly, she entered without inspection in August 1997 and remained until July 31, 2005. The applicant accrued seven years of unlawful presence from August 1997 until July 2005, and triggered the ten-year-bar when she left the country, rendering her 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 will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen spouse. 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 medical prescriptions, the physician’s note, [REDACTED] declarations, birth certificates, a marriage certificate, remittance receipts, character references, 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 he remains in the United States without the applicant, and alternatively, if he 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.

declaration dated November 18, 2005, is not accompanied by an English language translation. The regulation at 8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to the Service [now U.S. Citizenship and Immigration Services, “USCIS”] shall 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 November 18, 2005 declaration by [REDACTED] is without an English translation, the declaration will carry no weight in this decision. *See*, 8 C.F.R. § 103.2(b)(3).

[REDACTED] is 62 years old; he married the applicant on October 17, 2003. He states that he will be emotionally hurt and suffer economic hardship if separated from his wife. [REDACTED] indicates that he has health problems. In a note dated October 23, 2006, [REDACTED] states that [REDACTED] is under treatment for hypertension, hypercholesteremia, and prostatitis; and

will have a prostate evaluation and undergo a biopsy. He states that [REDACTED]'s conditions have been diagnosed in the last two years and "are adversely affected by improper diet, poor meal compliance, and increased stress." He states that his long separation from his wife creates a hardship "on his adherence to regular meals, diet, and overall well-being," which, in turn, creates a poorer prognosis. [REDACTED] prescribed Caduet (used to treat high blood pressure and high cholesterol) and Alprazolam (used to treat anxiety disorders) for [REDACTED]. Mr. [REDACTED] indicated that he will experience financial hardship having to pay his wife's rent and food. Remittances from [REDACTED] show that [REDACTED] has provided financial support to his wife in August, September, October, and November of 2005.

[REDACTED] is very concerned about separation from his wife. 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). In *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).

When the submitted evidence of the note and prescriptions by [REDACTED] and the [REDACTED] remittances are considered collectively, the AAO finds that the record demonstrates that the hardship of [REDACTED], as a result of separation from his wife, is of such a nature that is unusual or beyond that which would normally be expected from an applicant's bar to admission. Consequently, based on the record, the applicant has established that [REDACTED] has experienced, and will continue to experience, extreme hardship as a result of their separation.

[REDACTED] states that he will have economic hardship if he joined his wife to live in Mexico. He conveys that he has lived in the United States for 34 years, he does not have relatives in Mexico, and his wife's relatives in Mexico are unable to assist her. [REDACTED] is 62 years old and has health problems for which he takes medication. He is currently under evaluation regarding his prostate and will undergo a prostate biopsy. All of these factors combined, the AAO finds, establishes that Mr. [REDACTED] will experience extreme hardship if he were to join his wife 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).

The grant or denial of the above waiver does depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factor in this matter is the extreme hardship to the applicant's spouse. The unfavorable factors in this matter are the applicant's several entries without inspection and her periods of unauthorized presence. The AAO notes that the applicant does not appear to have a criminal record. The AAO finds that the hardship imposed on the applicant's spouse as a result of her inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.