

Identifying data deleted to
ensure clearly documented
invasion of personal privacy

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

PUBLIC COPY



H₂

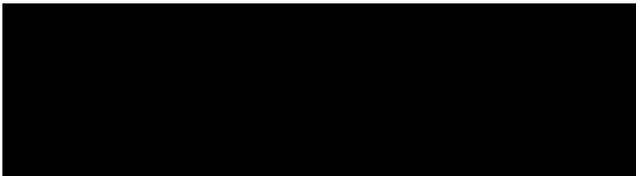
FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
CDJ 07 198 50016 (RELATES)

Date: OCT 28 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 (INA), 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).

Michael Shumway

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico, the wife of a U.S. citizen, the mother of a U.S. citizen daughter, and the beneficiary of an approved Form I-130 petition.

The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband and daughter. The district director also found that the applicant had not established that failure to approve the waiver application would cause extreme hardship to her U.S. citizen spouse, and denied the application.

On appeal, counsel submitted additional evidence. Although counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(9)(B)(i) of the Act provides:

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 (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, 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.

On the Form I-130 Petition for Alien Relative, the applicant's husband, who signed that form on June 12, 2003, stated that his wife entered the United States, without being admitted, on April 8, 2002. On a Form DS-230 visa application the applicant stated that she had lived in California from April 2002 until she signed that form on October 26, 2005.

On a Form G-325A, the applicant indicated that she had lived in California from 2000 until she signed that form on October 27, 2005. On the Form I-601 waiver application the applicant, who signed that form on October 27, 2005, indicated that, having entered without inspection, she lived in California from April 2000 until October 25, 2005. On a G-325A Biographic Information form, which she also signed on October 27, 2005, she again stated that she had lived in California since 2000.

The record does not indicate that the applicant ever achieved any legal status in the United States. The applicant submitted the Form I-601 waiver application and the Form DS-230 visa application on October 27, 2005, which indicates that, by that time, she had left the United States.

The evidence in the record is sufficient to show that the applicant was unlawfully present in the United States from April of either 2000 or 2002 through some date during 2005, possibly October 25, and, in any event, a period longer than one year. The record also shows that the applicant has since left the United States. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] 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 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.

A waiver of inadmissibility 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. Hardship to the applicant or her daughter is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA has held:

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).

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 record contains a letter, dated November 8, 2005, from [REDACTED], a pediatrician. In that letter, [REDACTED] stated that the applicant's daughter has a history of urinary tract disorder and respiratory syncytial viral bronchiolitis. [REDACTED] did not give any indication of the severity of those disorders, but stated that the daughter receives nebulizer treatments and uses an inhaler as needed.

In an undated letter the applicant's husband stated that his daughter, who was then nine months old, is in Mexico with the applicant, but must return to the United States for treatment. He further stated that because of the special care his daughter needs, if the applicant is unable to return to the United States, his daughter would require a specially trained permanent baby sitter. He further stated that separating the child from the applicant, the child's mother, would be detrimental to her health and emotional well-being.

The applicant's husband further stated that if the applicant remains in Mexico he will be obliged to support her there, in addition to paying a monthly mortgage debt service of \$2,400, paying for his daughter's special needs babysitter, and paying for other living expenses in the United States.

The record contains a Psychological Report from [REDACTED] a family therapist in Santa Ana, California. [REDACTED] stated, "[The applicant's husband] complains of a profusion of emotional symptoms that originated after his wife and daughter had to stay in Mexico on October 27, 2005." She stated that he reported the following symptoms (1) loss of energy, fatigue, tiredness, (2) insomnia, sleep disturbances, nightmares, (3) anxiety and nervousness, (4) withdrawal from social relationships, (5) depression, (6) headaches and stomach aches due to anxiety, (7) feelings of hopelessness and worthlessness, (8) forgetfulness and lack of concentration, and (9) increased appetite with 12 lb. weight gain.

[REDACTED] confirmed that the applicant's husband's affective state reflects a depressed mood. She diagnosed his as having major depressive disorder and generalized anxiety disorder, as well as headaches and stomach aches due to anxiety. She stated that his **symptoms will** continue until he, the applicant, and their child are together in the United States. [REDACTED] further stated, "All family members will deteriorate if they are forced to continue to live apart from each other." [REDACTED] gave no indication, however, that she ever met the applicant or the child.

stated she first interviewed the applicant's husband on September 19, 2006. That report is dated September 19, 2006. suggested that the applicant's husband's anxiety reaction might be controllable with antianxiety medication, but the record contains no suggestion that this was ever attempted.

That report contains no evidence that conducted therapy with the applicant's husband either before or after their meeting, nor does the evidence show that the applicant's husband has ever sought treatment for any symptoms related to stress, anxiety, or depression. reports that the applicant's husband is suffering from depression which manifests itself through numerous physical symptoms, such as insomnia, exhaustion, lack of concentration, and overeating. Nothing in the record, however, suggests that the applicant's husband has received receiving regular psychiatric or psychological therapy. Rather, the evidence suggests that he consulted with a therapist once as necessary to obtain a letter for use as evidence in the instant case.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between the applicant's husband and the therapist, and does not reflect an ongoing relationship with the applicant's husband. The conclusions reached in the submitted report, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, psychiatrist, or other therapist, thereby rendering findings speculative and diminishing the report's value in determining extreme hardship.

The record does not establish that the applicant's husband is experiencing or will experience emotional hardship greater than that which is normal in similar situations. The record does not establish that, if the waiver application is denied, the emotional hardship that the applicant's husband will experience, when considered together with the other hardship factors in this case, will rise to the level of extreme hardship.

The applicant's husband has alleged that he will suffer financial hardship if the applicant is not permitted to return to the United States, because he will be obliged to support his wife in Mexico, and a special needs child in the United States, in addition to himself.

The applicant's husband alleged that his daughter is unable to continue living in Mexico because she can only receive medical treatment in the United States, and that, if she lived in the United States, she would require full-time specialized care because of her afflictions.

The medical evidence submitted, however, does not support the applicant's husband's assertion that his child requires treatment that is not available in Mexico. Even if that is so, the record does not demonstrate how often the applicant's child requires those treatments. The record does not show where the applicant and the child currently live in Mexico. The record shows that the applicant's husband lives in Corona, California, about 100 miles from the Mexican border. The applicant's husband has not demonstrated that his child cannot continue to live in Mexico with her mother and commute to visit a doctor in the United States as necessary.

The evidence in the record does not demonstrate that for the applicant's daughter to reside in Mexico would create a risk to her health that would cause the applicant's husband hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

Even if the record demonstrated that the applicant's daughter must live in the United States, the record still would not support the applicant's husband's assertion that the administration of her medications requires special training. Although the applicant's husband stated that her living in the United States would necessitate a permanent baby sitter, he did not discuss whether family members are available to help with that duty or, if not, how much such a babysitter would cost.

The evidence in the record does not demonstrate that, if the applicant remained in Mexico and the child came to the United States to live with her father, this would necessitate extra expense which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

As to the expense of supporting the applicant, with or without the child, in Mexico, the record is silent. The record also contains no evidence of the annual amount the applicant's husband earns and no exhaustive listing of his monthly expenses. The only evidence pertinent to the applicant's husband's expenses is a statement by the applicant's husband. Although the applicant's husband stated that he has a monthly mortgage expense of \$2,400, he provided no evidence to support that assertion.

The additional expense of supporting his wife in Mexico would necessarily constitute some degree of hardship. Without any discussion of the applicant's husband's income and expenses, however, the evidence is insufficient to show that the expense of supporting the applicant in Mexico would occasion hardship to the applicant's husband which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

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 husband faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than 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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen husband as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.