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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
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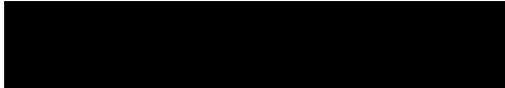


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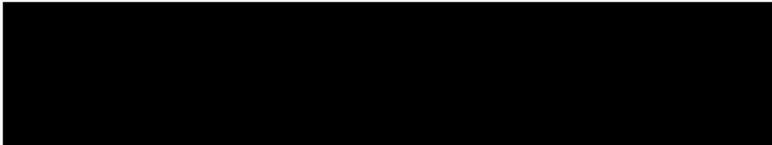
Date: OCT 28 2009

IN RE:



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 Summary

for 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 husband of a U.S. citizen daughter, the father of a U.S. citizen, 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) of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his husband and daughter. The district director also found that the applicant had failed to establish that failure to approve the waiver application would cause extreme hardship to his U.S. citizen spouse, and denied the application.

On appeal, counsel submitted a brief and additional evidence. In the brief, counsel stated “The [a]djudicating officer erred in the factual basis that forms the basis of his decision” and that the applicant is not inadmissible under section 212(a)(9)(B)(i)(I) of the Act. Although counsel offered no evidence or further argument on that point, the AAO will initially address the finding that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act.

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.

A Form DS-230 Application for Immigrant Visa and Alien Registration, which the applicant signed on November 17, 2005, indicates that the applicant had then lived in Costa Mesa, California since April 1996. On the Form I-130 Petition for Alien Relative, the applicant’s wife, who signed that form on March 26, 2006, stated that the applicant entered the United States without inspection on April 1996. The record contains no indication that the applicant ever attained any legal status in the United States.

The Form DS-230 visa application and the Form I-601 waiver application were submitted in Ciudad Juarez, Mexico on November 22, 2005, which indicates that the applicant had, by then, left the United States. On that form the applicant stated that he left the United States during November of 2005. In a letter submitted on June 26, 2006, the applicant's wife indicated that the applicant had been away from his family since October 17, 2005.¹ In a letter dated July 19, 2005 the applicant's wife stated that she and her daughter had recently met the applicant in Ciudad Juarez, Mexico, thus confirming that he had left the United States.

Pub. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides at section 309,

(a) IN GENERAL.-Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division, this subtitle and the amendments made by this subtitle shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act (in this title referred to as the "title III-A effective date").

At section 301(b)(3), the IIRIRA provides,

TREATMENT OF UNLAWFUL PRESENCE BEFORE EFFECTIVE DATE.-In applying section 212(a)(9)(B) of the Immigration and Nationality Act, as inserted by paragraph (1), no period before the title III-A effective date shall be included in a period of unlawful presence in the United States.

The IIRIRA was passed by the 104th United States Congress on Sept. 30, 1996. Therefore, for the purpose of this inadmissibility provision, the applicant's illegal presence began on April 1, 1997 and continued until he departed the United States during either October or November of 2005, a period of more than one year. The AAO finds, therefore, that the applicant is inadmissible for ten years after the date he left the United States, which period has not yet ended. The remainder of this decision will be concerned with whether waiver of the applicant's inadmissibility is available and whether it 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.

¹ The applicant's wife stated that on June 17, 2006 the applicant had been away from his family for eight months.

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 his 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 wife 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).

In various letters and declarations the applicant's wife stated that she and her husband miss each other very much; that living apart is very difficult and she cries for him; that she attends college and cares for their three-year old child; that she cannot visit the applicant in Mexico because she has to work; that she does not want her child, who cries for her father, waits for him at their door, and sometimes cries herself to sleep, to grow up without her father; that the applicant supported the family financially and she is having difficulty paying the bills without his income; that she is going to be obliged to work two jobs; that she has worked while pregnant, and that she and her daughter previously lived in California but were subsequently obliged to live in Colorado with her mother.

In a letter dated July 19, 2006, the applicant's wife stated that she and her daughter are living with her mother, but that her mother told her she will only permit her to stay for two months. In various letters the applicant's wife stated that she is attending college. In an undated letter she stated that if

the waiver application is not approved, "It is goin to be a loss of opportunity for higher education, I was going to trane to become a Police Officer." [Errors in the original.]

A letter, dated March 23, 2006, from a coworker of the applicant's wife indicates that because the applicant is not in the United States, the applicant's wife must earn a living, and states that she is therefore unable to stay at home when she needs to rest or when her daughter is ill. The letter states that the applicant's wife cares for her daughter at night and gets very little sleep, which makes the next day at work more difficult. The letter also states that because the applicant's wife is obliged to work, she must assure that someone watches her daughter while she is away. The letter does not otherwise describe the applicant's child care arrangements or their cost.

The record contains a letter, dated April 10, 2006, from the applicant's mother-in-law, who stated that her daughter and granddaughter, who are the applicant's wife and child, live with her. She stated that the applicant's wife pays \$250 per month in rent and \$200 for child care, and is expecting another child.

An Advice of Deposit in the record shows that the applicant's wife earned \$303.10 from Aurora, Colorado Public School during a pay period of unspecified duration.

On appeal, counsel asserted, "the adjudicating officer failed to take into consideration the [applicant's] wife's age [and] health, and the care and support he provides to his spouse and [United States citizen] child. Counsel stated that the applicant's wife is "totally dependent on [the applicant] . . . for monetary assistance [and for] rearing their child together."

The evidence of the applicant's wife's economic situation is very sparse. The record does not contain copies of her recent tax returns and contains no other evidence of her total annual income. The record does not contain an exhaustive listing of her expenses. Further, the record contains no evidence to corroborate the assertions of counsel and the applicant's wife that the applicant ever earned income in the United States.

If the applicant's annual income were evidenced in the record, the AAO would certainly consider that the loss of that income, in whatever amount, would constitute some degree of hardship to the applicant's wife. The applicant's wife, however, has some income of her own, and the amount of that income is not in evidence. Counsel's assertion that she is "totally dependent" on the applicant's income, which the record does not demonstrate ever existed, is insufficient.

Without the ability to compare the applicant's wife's own income to her expenses, the AAO is unable to determine whether the hardship occasioned by the loss of the applicant's alleged income in an unspecified amount, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The evidence of the medical condition referred to by counsel is even more meager. In a letter dated March 7, 2006 she stated that she was then pregnant. Her current medical condition is not evidenced in the record and is unknown to the AAO. The evidence in the record does not demonstrate that the

applicant's absence has caused any medical hardship to his wife, or that the alleged medical hardship, when considered together with the other hardship factors in this case, rises to the level of extreme hardship.

The significance of counsel's reference to the applicant's wife's age is unclear to the AAO. The applicant's wife was born on August 17, 1985 and is now a young adult. No reason appears in the record to suggest that she is at an unusually vulnerable age. No reason exists to believe that the applicant's wife's age, coupled with the applicant's absence, creates a hardship to the applicant's wife which, when considered together with the other hardship factors in this matter, rises to the level of extreme hardship.

The applicant's wife stated, in a letter dated March 7, 2006, that she is unable to visit the applicant in Mexico because she is obliged to work. If this were true, it would constitute an additional hardship. The applicant's location in Mexico is unclear from the record, as is his ability to relocate closer to the U.S. border. The applicant's wife's current address, however, is in Costa Mesa, California, approximately 100 miles from the Mexican border. Further, the applicant's wife stated, in a letter dated July 19, 2006, that she had recently visited the applicant in Mexico with her daughter. The hardship caused to the applicant's wife by the difficulty in visiting him does not, when considered together with the other hardship factors in this matter, rise to the level of extreme hardship.

The applicant's wife's coworker indicated that the demands on the applicant's wife of working and caring for her child are extremely arduous. The applicant's wife stated that she and her husband miss each other very much, that living apart is very difficult, and that she cries for him. She further stated that she is obliged to care for her daughter, who also misses the applicant and cries for him. Those factors clearly occasion emotional hardship to the applicant's wife. They appear, however, to be no greater than the hardship one would expect in a typical case of inadmissibility of an alien relative. The evidence does not demonstrate that the emotional hardship to the applicant's wife, when considered together with the other hardship factors in this matter, rises to the level of extreme hardship.

Although the applicant's wife has stated that she attends college, she provided no evidence in support of that assertion. She implied that she would be obliged to leave college if the applicant were unable to return to the United States, but provided no evidence that she has since left college or that she will. She stated that she planned to be a police officer and that the failure to approve the waiver application frustrated that goal, but provided no evidence that she has ever pursued that goal or that attaining it was ever feasible. The assertions that she is attending college; that she has been forced or will be forced to abandon college if the applicant does not return, and that she planned to be a police officer but has been frustrated in that goal by the denial of the waiver application, absent supporting evidence, are insufficient to show that denial of the waiver application has caused her the hardship of having to abandon college and her inchoate career.

Further, neither the applicant, nor the applicant's wife, nor counsel has addressed the possibility that the applicant's wife and child might be able to move to Mexico to be with the applicant without experiencing extreme hardship. The AAO is unable to conclude, therefore, from the evidence and

argument in the record, that if the applicant's wife and child moved to Mexico this would cause extreme hardship to the applicant's wife.

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 wife faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that she 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 his U.S. citizen spouse 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.