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Office of Administrative Appeals MS 2090  
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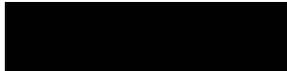
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FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

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: 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.

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).

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, 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 wife. The district director also found that the applicant 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, the applicant's wife provided an additional letter pertinent to hardship. Although the letter does 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.

The applicant indicated, on a G-325A Biographic Information form that he signed on October 14, 2005, that he had lived in Texas since March 2000. On a Form DS-230, Application for Immigrant Visa and Alien Registration, the applicant stated that he had lived in Texas since March 28, 2000.

On the Form I-130 Petition for Alien Relative, the applicant's wife, who signed that form on July 29, 2004, indicated that the applicant entered the United States without inspection during March 2000. The Form I-601 waiver application was filed on or about December 6, 2005 in Ciudad Juarez, Mexico, which indicates that the applicant had left the United States and was then in Mexico. In a letter dated August 28, 2006, the applicant's wife indicated that the applicant was still in Mexico. The record contains no indication that the applicant ever gained any lawful status while he was in the United States.

The evidence in the record is sufficient to show that the applicant was unlawfully present in the United States from March 28, 2000 until on or about October 14, 2005, a period greater than one year, and that he 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 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).

The record contains a letter, dated September 26, 2005, from the applicant's wife. In it, she stated that if the applicant is not permitted to return to the United States then to visit him she would be obliged to take leave from work and drive to Mexico. She stated that, with the current price of gasoline, this would be expensive, and that going to Mexico might result in her losing her job. She further stated that the applicant has offered her emotional support including when she recently "... lost a lot of relatives."

The record contains another letter from the applicant's wife, dated August 28, 2006, referred to above. In it, the applicant's wife stated that separation is extreme hardship for her and that she has been very depressed. She stated that she sometimes does not speak to her family, instead either sleeping or just crying. She further stated that she has insomnia and her appetite has decreased, and that each successive day is more difficult for her.

The record contains no other evidence pertinent to hardship that would result to the applicant's wife if the waiver application is not approved. The only hardships alleged are the emotional/psychological hardship that the applicant's wife claims to suffer due to his absence and the logistical and financial hardship she would encounter if she visited him. The record contains no evidence, or even argument, that the absence of the applicant in the United States has caused any other economic hardship to the applicant's wife.

Although the applicant's wife described some symptoms of depression, and concluded that she is depressed, she provided no evidence to support that claim. The record contains no letters from mental health professionals attesting to her symptoms, offering a diagnosis, or assessing the severity of her asserted condition. The evidence in the record is insufficient to show that, if the applicant's waiver application is not approved, the applicant's wife will experience emotional/psychological hardship which, when considered together with the other hardship factor in this case, would rise to the level of extreme hardship.

The applicant's wife alleged that going to visit the applicant in Mexico might result in her losing her job, but did not explain how that could occur. The applicant's wife lives in Lockhart, Texas, approximately 200 miles from the border with Mexico. Where in Mexico the applicant currently lives is not revealed in the record. Although the applicant's wife indicated that the travel expense would be onerous, the record contains no evidence that it would represent a hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

Further, the evidence provided does not demonstrate that, even if she was unable to visit the applicant in Mexico, the applicant's wife would suffer hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

Further still, the applicant's wife did not address the possibility of her moving to Mexico in order to live with her husband. Being obliged to move would necessarily entail some degree of hardship. The record contains no evidence to suggest, however, that, if she went to Mexico to live with the applicant, the applicant's wife would suffer hardship that 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 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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 wife 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.