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U.S. Citizenship and Immigration Services
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U.S. Citizenship
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FILE:



Office: CIUDAD JUAREZ
CDJ 2002 615 605 (RELATES)

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).

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Officer in Charge (OIC), Ciudad Juarez, Mexico, 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, the mother of a U.S. citizen son, and the beneficiary of an approved Form I-130 petition.

The OIC 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 his wife and son. The OIC also found that the applicant had not established that failure to approve the waiver application would cause extreme hardship to his U.S. citizen wife, and denied the application.

On appeal, the applicant's wife reasserted her claim that failure to approve the waiver petition would cause her extreme hardship. Although the applicant and his wife did not appear to contest the OIC'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 a visa application that the applicant signed on April 12, 2005 and submitted in Ciudad Juarez, Mexico, the applicant stated that he had lived in Arizona from November 1992 through 2001. On a G-325A Biographic Information form that he signed on June 17, 2005, the applicant reiterated that he had lived in Arizona from November 1992 to 2001. On the Form I-601 waiver application, which the applicant also signed on June 17, 2005, the applicant stated that he had lived in Arizona from November 1992 through August 2001. On that application the applicant stated that he then lived in Michoacan, Mexico, which confirms that he had, by then, left the United States. The record does not demonstrate that the applicant ever attained any legal status in the United States.

The evidence in the record is sufficient to show that the applicant was unlawfully present in the United States from November 1992 to August 2001, 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 or son 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 April 12, 2005, from the applicant, and a letter dated June 16, 2005 from the applicant's wife. Those letters are in Spanish and are not accompanied by an English translation. Any document containing foreign language submitted to [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. 8 C.F.R. 103.2(b)(3). Because the statements of the applicant and his wife were submitted without the required translation, their contents shall not be considered.

The record contains a letter, dated June 20, 2006, from the applicant's wife. In it, she stated that living without her husband is an extreme hardship for her, because of the financial difficulties, because she misses her husband, and because the children miss their father. She also stated that for her and her children¹ to go to another country with a lower standard of living and fewer educational opportunities, especially in English, would be devastating to her and her children. She provided no additional details pertinent to her hardship claims.

In a letter, dated September 18, 2006 and submitted on appeal, the applicant's wife stated that she is depressed and desperate because she and her husband have been separated for five years. She stated that it puts stress on their marriage and on her, and that she may be unable to continue working even though she is her children's sole support. She stated that she wants her children to grow up with their father.

The record contains no other evidence pertinent to hardship that will result to the applicant's wife if the waiver application is not approved.

Although the applicant's wife stated that her husband's absence is causing her financial difficulties, she did not provide evidence of her annual earnings or evidence of her expenses. Without any such evidence the AAO cannot compare the two and determine whether failure to approve the waiver application would result in financial hardship to the applicant's wife which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The only indication of any medical, emotional, or psychological hardship to the applicant's wife as a result of the applicant's absence is the applicant's wife's statement that she is depressed and emotionally stressed. However, the record contains no evidence from a medical, psychological, or psychiatric professional to show the existence of the conditions of which the applicant's wife complained, or their severity. Without any such evidence, the AAO cannot find that the failure to approve the waiver application would result in medical or psychological hardship to the applicant's wife which, when considered together with the other hardship factors in this matter, would rise to the level of extreme hardship.

¹ In her letters, the applicant's wife indicated that she and the applicant have two children. The Form I-601, which the applicant signed on June 17, 2005, shows one child, The record contains no information pertinent to the alleged second child.

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.