

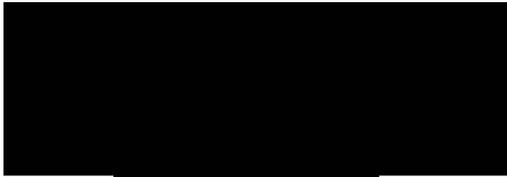
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [Redacted]
(CDJ 2004 792 295 relates)

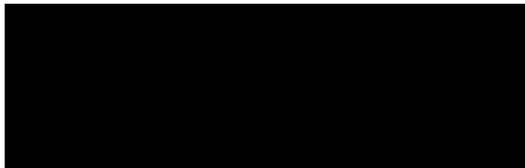
Office: MEXICO CITY (CIUDAD JUAREZ)

DATE SEP 01 2009

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 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).

John F. Grissom
Acting 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 dismissed.

The record establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in March 2002 and did not depart the United States until November 2005. The applicant was thus found to be inadmissible to the United States pursuant to 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 seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child, born in 2002.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 31, 2006.

In support of the appeal, prior counsel for the applicant submitted a brief, dated September 26, 2006, and referenced exhibits. In addition, on March 31, 2009, counsel for the applicant submitted a declaration from the applicant's U.S. citizen spouse, support letters, and photographs of the applicant and her family. The entire record was reviewed and considered in rendering this decision.

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

Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(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.

(v) Waiver. - The Attorney General [now the Secretary of 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...

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or their child cannot be considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors 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.

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).

The applicant's spouse contends that he will suffer emotional hardship if the applicant's waiver request is not granted. In a declaration, he asserts that he is suffering hardship due to the long and close relationship he has with his spouse, and due to the long-term separation from his child, who is residing with the applicant in Mexico. He notes that his daughter is experiencing hardships while in Mexico, due to substandard living conditions and academics and the long-term separation from her father. *Declaration of* [REDACTED]

In support of the applicant's spouse's emotional hardship, a letter has been provided by [REDACTED] [REDACTED] Mental Health Counselor, stating that the applicant's spouse has been seen twice at Community Counseling Services due to Major Depressive Disorder, Single Episode. *Letter from* [REDACTED] *Mental Health Counselor*, dated September 22, 2006.

With respect to the emotional hardship referenced above, although the input of any medical professional is respected and valuable, the AAO notes that the submitted letter is based on two appointments, in 2006, between the applicant's spouse and the mental health counselor. Moreover, the conclusions reached by [REDACTED], being based on two appointments, do not reflect the insight and elaboration commensurate with an established relationship with a mental health profession, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a

determination of extreme hardship. In addition, although counsel submitted supplemental documentation to the AAO in March 31, 2009 in support of the appeal, the AAO notes that no documentation establishing the applicant's spouse's current mental health was provided, to further support the gravity of the situation.

In addition, it has not been established that the applicant's spouse is unable to travel to Mexico, his home country, to visit the applicant on a regular basis. Finally, it has not been established that the applicant's child will suffer extreme hardship were she to continue to reside in Mexico with the applicant or alternatively, were she to relocate to the United States to reside with the applicant's spouse, thereby causing extreme hardship to the applicant's spouse, the qualifying relative in this case. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or 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 a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary 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 did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond 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).

The AAO recognizes that the applicant's spouse will endure hardship as a result of continued separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse is suffering extreme hardship due to the applicant's inadmissibility.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse asserts that he is unable to relocate abroad as he is supporting his two sons from a prior marriage, born in 1985 and 1990. He further notes that he is afraid of losing

his health insurance if he were to relocate to Mexico. Finally, the applicant's spouse states that "I have been in the United States since 1981. This is my country now. I am completely accustomed to life here and it would be devastating for me to have to completely alter my lifestyle and return to Mexico. I would sacrifice everything that I have worked so hard to attain.... I also constantly worry about how dangerous it is.... Because I have several siblings and other family members here in the United States, I would also suffer immensely to have to leave them all behind...." *Supra* at 2-3.

It has not been established that the applicant's spouse, employed at an apple farm, would be unable to obtain gainful employment with adequate medical coverage in Mexico. Nor has it been established that were the applicant's spouse to relocate abroad to reside with the applicant, he would be unable to continue supporting his adult sons, emotionally and/or financially, thereby causing him extreme hardship. Finally, it has not been established that the applicant's spouse would be unable to return to the United States on a regular basis to visit his sons, siblings and other family members. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. As such, it has not been established that the applicant's spouse would suffer extreme hardship were he to relocate to Mexico, his birth country, to reside with the applicant.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were not permitted to reside in the United States, and moreover, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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 remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.