

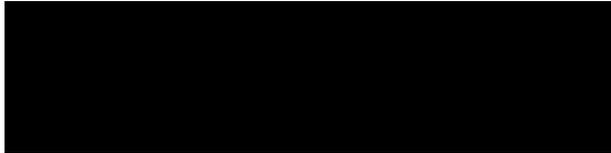
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

SEP 02 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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the applicant's husband. In that document, the applicant's husband agreed to recognize [REDACTED], of Pronto Dollars in Soledad, California, as his attorney or representative. The record does not demonstrate, however, that [REDACTED] is an attorney. [REDACTED] name does not appear on the list of Accredited Representatives maintained by the Board of Immigration Appeals (BIA). Further, Pronto Dollars does not appear on the list of recognized organizations maintained by the BIA. All representations will be considered, but the decision will be furnished only to the applicant.

The record reflects that the applicant is a native and citizen of Mexico, the spouse of a U.S. citizen, the mother of a three U.S. citizen sons, 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 her husband and sons. The district director also found that the applicant had failed to establish that denial of the waiver application had caused or would cause extreme hardship to her U.S. citizen spouse, and denied the application.

On appeal, the applicant provided additional evidence. Although the applicant 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.

The Form I-130, Petition for Alien Relative, which the applicant's husband signed on January 6, 2002, states that the applicant entered the United States without inspection on March 22, 2001.

The Form I-601, Application for Waiver of Inadmissibility, and G-325, Biographic Information form, both of which the applicant signed on July 25, 2005, state that the applicant lived in Five Points, California from March 2001 to August 2001, and in San Ardo, California from August 2001 to July 2005. A notation made on the Form I-601 indicates that at an interview the applicant indicated that her presence was pursuant to entry without inspection.

A marriage license in the record shows that the applicant married her husband on August 19, 2001 in Mendota, California. The applicant submitted her Form I-601 in Ciudad Juarez, Chihuahua, Mexico, on July 27, 2005, which indicates that by that date 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 March 2001 to July 2005, and that she 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 children 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 BIA 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 July 25, 2005, from the applicant's husband. That letter is in Spanish and was not accompanied by an English translation. 8 C.F.R. § 103.2(a)(3) states:

Translations. Any document containing foreign language submitted to the Service [now the U.S. Citizenship and Immigration Services] 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.

Because the applicant failed to submit a certified translation of that document, the document will not be further considered.

The record contains an undated letter from the applicant's husband with the requisite translation. That letter states that the separation is hurting him and his family a lot, that his three children had to leave with the applicant because the applicant's husband is unable to care for them without her assistance, that they miss each other a lot, and that "no one including [the applicant's husband] is felling [sic] well emotionally." The applicant's husband added that when he speaks to his children on the telephone they cry a lot because they do not want to be separated from their father.

The record contains a letter from the applicant's husband in Spanish with an English translation dated June 16, 2006. In it, he stated that he and his wife did not understand the consequences of her illegal presence in the United States, and that his separation from his family has been hard for him. He also stated that he has become so depressed that he was forced to go to the emergency room for his high blood pressure. He stated that he cannot concentrate on his work because he obsesses about his children, but that he is unable to care for them in the United States without his wife. The applicant's husband indicated that the applicant is living with her father in Mexico. The applicant's husband also asserted that few job opportunities exist in his home state in Mexico, but provided no corroborating evidence of that assertion.

The record contains a letter, dated June 5, 2006, from the applicant's husband. That letter states that the applicant's husband needs his children with him in the United States.

A letter in Spanish and an English translation, dated February 11, 2006, indicates that a doctor administered an Ultrasound to the applicant's husband and found a lesion above the pectoral muscle, which he recommends excising for biopsy.

The applicant's husband indicated that the applicant is living with her father. The record contains photocopies of checks that purport to show that he is supporting her there. Being obliged to support a family member away from home necessarily entails some hardship. The record contains no evidence, however, pertinent to the remainder of the applicant's husband's budget. Whether he is able to continue to support his wife and children in Mexico without suffering extreme hardship is unknown to AAO. The record does not demonstrate that the applicant's living in Mexico without him is causing him financial hardship which, when considered together with the other hardship factors in this matter, rises to the level of extreme hardship.

If the applicant's husband were to join the applicant in Mexico, he would be obliged to leave his job in the United States. The AAO finds that to give up his job would cause him some hardship, but without supporting evidence pertinent to the job opportunities open to him in Mexico, the AAO cannot find that the financial hardship the applicant's husband would face if he moved to Mexico would, when considered together with the other hardship factors in this case, constitute extreme hardship.

The applicant's husband asserted that he has been treated for high blood pressure, but provided no evidence in support of that assertion. The applicant provided evidence that a lesion has been found on one of his pectoral muscles and that a doctor recommended excising it, but provided no evidence that this is a serious condition or that the presence of his family in the United States will have any effect on the course of his treatment. Again, the evidence is insufficient to show that failure to approve the waiver petition will cause medical hardship to the applicant which, when considered with the other hardship factors in this case, rise to the level of extreme hardship.

The remaining issue raised is the emotional hardship that would be occasioned to the applicant's husband by failure to approve the waiver application. Clearly, the applicant's husband would greatly prefer to live with the applicant and their children, and their separation is some degree of hardship. Separation from one's spouse and children 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.

In the instant case, the applicant's husband has stated that his children miss him and cry when they speak to him on the telephone, and that none of the family members feel emotionally well. He has stated that he needs them with him in the United States. That the applicant's children miss him and express it emotionally is likely common in cases of such separation. Without further details and evidence from a doctor or mental health professional, the statement of the applicant's husband that

he does not feel emotionally well is insufficient to sustain the burden of proof. The evidence submitted is insufficient to show that the applicant's husband is suffering, or will suffer, emotional hardship which, when combined with the other hardship factors in this case, rises to the level of extreme hardship.

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.

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 record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse 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.

The AAO therefore finds that the applicant failed to establish extreme hardship to her 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.