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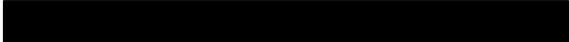
U.S. Citizenship  
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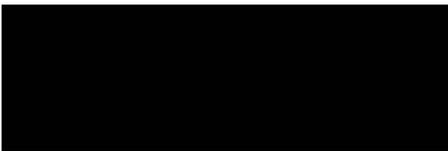
SEP 21 2009

FILE: Office: MEXICO CITY (CIUDAD JUAREZ) Date:  
CDJ2004 590 312 (relates)

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).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Officer in Charge (OIC), Ciudad Juarez, 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 wife 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) of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband and son.

The district director also found that the applicant had failed to establish that failure to approve the waiver application would cause extreme hardship to her U.S. citizen spouse, and denied the application for waiver.

On appeal, counsel submitted additional evidence and argued that the evidence demonstrates that denial of the waiver application will cause extreme hardship to the applicant's husband. Although counsel 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.

The Form I-130 Petition for Alien Relative, which the applicant's husband signed on January 23, 2002, states that the applicant entered the United States without inspection during May of 2000. The Form I-601 Application for Waiver of Inadmissibility, which the applicant and the applicant's husband signed on August 8, 2005, states that the applicant entered the United States without inspection and resided unlawfully in Texas from May 2000 until August 2005. The record contains no indication that the applicant ever had any legal status in the United States. The applicant's husband stated, in a letter dated September 20, 2006, that he and the applicant attended an August 8, 2005 interview in Ciudad Juarez, Mexico. The applicant submitted the waiver application there.

The evidence in the record is sufficient to show that the applicant was unlawfully present in the United States from May 2000 to August 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 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 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-Moralez*, 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 the joint tax returns and an IRS transcript showing tax information for 2001 through 2005. Those documents show that the applicant and her husband declared adjusted gross income of \$24,186, \$31,985, \$32,980, \$34,265, and \$33,694 during those years, respectively. Some Form W-2 Wage and Tax Statements and a Form 1099 Miscellaneous Income statement accompanied the tax returns. Those forms show that during 2003 and 2005 the applicant's husband earned all of the family income. No documents indicate that the applicant contributed any income during any of the years from 2001 to 2005.

The record contains no information pertinent to the recurring monthly expenses of the applicant and her husband, except a September 2006 mortgage statement that shows that the applicant's husband then had a monthly mortgage payment of \$1,354.74.

The record contains a letter, dated September 13, 2006, from an acquaintance of the applicant and her husband. That letter states,

Right now [the applicant's husband] and his son are going through a difficult time because [redacted] misses his mom. When I visit the family I see how sometimes [redacted] cries for his mom and says he want[s] to see her. I have also noticed that when someone is on the phone he thinks it's [the applicant] on the other end, and cries because they tell him it is not [the applicant]. For [the applicant's husband] to see [his son] miss [the applicant] is difficult and stressful.

Another acquaintance letter, dated September 15, 2006 states,

In the past year [the applicant] and her husband have had a very hard time due to them being apart from each other and their son. They have a two[-] year old son [who] needs both his mother and father's attention. I know that [the applicant's husband] has had their son with him and times that he has had to take him to Mexico and drop him off with [the applicant]. Every time I see [the applicant's husband] he seems sad and down due to his family being apart from each other.

Letters from other friends and family members reiterate that the separation of the applicant's family is causing its members hardship, including emotional and financial hardship.

In his own letter, the applicant's husband indicated that, after leaving the United States, the applicant lived for six months in Ciudad Juarez, but then moved into her grandmother's household in Durango. He further stated that he was obliged to bring his son back to the United States, rather than leaving him with the applicant in Mexico, because he has health insurance in the United States, and he needs various immunizations and other medical care. He also stated that he has had sleepless nights because his son sometimes wakes up at night and cries for the applicant.

In the appeal brief, counsel asserted that the separation of the applicant's family was causing extreme hardship to the applicant's husband and son. Counsel cited precedent in support of the proposition that the hardship to the applicant's son is to be accorded great weight.

The AAO notes, again, that hardship to the applicant's son is not directly relevant to any issue material to this case. In order to prevail, the applicant must show that failure to approve the waiver application will cause extreme hardship to her husband.

The record shows that during the past several years the applicant's husband and the applicant have earned between \$30,000 and \$35,000 per year. The record also indicates that the applicant's husband has a monthly mortgage expense of \$1,354.74, which equates to an annual expense of \$16,256.88. Those numbers, taken by themselves, suggest that the applicant's husband does not have much disposable income, even before the expense of supporting the applicant in Mexico.

The record appears to indicate that the applicant now lives with her grandmother in Durango. The record does not indicate what amount, if any, the applicant's husband is obliged to pay to support her there. Further, the record contains no indication of the applicant's husband's recurring expenses, other than his mortgage payment.

Any additional expense required to support the applicant in Mexico would constitute some degree of hardship to her husband. Absent any evidence of that amount, however, and absent additional evidence that would permit the AAO to compare the applicant's husband's income with his expenses, the AAO is unable to find that the failure to approve the waiver application will cause hardship which, when considered together with the other hardship factors in this case, rises to the level of extreme hardship.

Clearly the absence of the applicant from the United States causes, in itself, some emotional hardship to the applicant's husband. Further, during the periods when the applicant's son is living with the applicant's husband, the applicant's absence causes considerable hardship to her son, which, in turn, causes additional hardship to her husband, with whom the child lives during those periods. Various letters in the record attest to that hardship.

The record contains no evidence from psychological or psychiatric professionals, however, attesting to the severity of the applicant's son's emotional distress. More directly on point, the record contains no professional testimony pertinent to the degree of emotional stress caused to the applicant's husband. Under these circumstances, the AAO cannot find that the emotional hardship caused to the applicant's husband, when considered together with the other hardship factors in this case, rises to the level of extreme hardship.

The applicant's husband asserted that his son is unable to live with his mother in Mexico because he has health insurance, which the applicant's husband implied only covers him in the United States. The applicant did not assert, and provided no evidence to support, that for his son to return to Mexico to live would cause the applicant's son any other hardship. The applicant and her husband

did not assert that for the applicant's husband to return to Mexico to live would cause him any other type of hardship.

The applicant's husband submitted no evidence, however, that his son has any medical issues that cause him to need regular medical care, other than routine inoculations. Further, the record indicates that the applicant's son sometimes stays with her in Mexico, and contains no indication that the child would be unable to travel to the United States as necessary to receive inoculations and other non-emergency care. Under these circumstances, the AAO cannot find that failure to approve the waiver application would, if the applicant's husband returned to Mexico with his son to live with the applicant, cause hardship to the applicant's husband which, when considered together with the other hardship factors in this case, 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 husband faces extreme hardship if the applicant's waiver application is not granted, whether or not the applicant's husband goes to live with her in Mexico. 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.

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 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.