

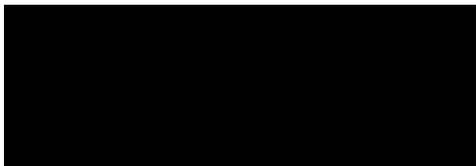
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H2

FILE:



(CDJ 2004 729 148)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date:

SEP 25 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the Act), 8 U.S.C. section 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 waiver application was denied by the District Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 27, 2006.

On appeal, the applicant's spouse states that she disagrees with the OIC's decision and is submitting additional evidence.

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

(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 [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.

The record indicates that the applicant entered the United States without inspection in May 2000 and remained until October 2005, when he departed voluntarily to Mexico. As the applicant accrued unlawful presence in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez*, 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 list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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 AAO notes that extreme hardship to a qualifying relative must be established whether he or she accompanies the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record includes, but is not limited to: statements from the applicant’s spouse; copies of documents in Spanish; a letter from Press Contractors, Inc., stating the applicant is employed by the company as a Reglaze Technician; a statement from the landlord for the applicant’s spouse asserting that the applicant and his spouse have been good tenants but if they fall behind on their rent he will be forced to evict them; statements from family attesting to the applicant’s character, requesting that he be granted a waiver; a document signed by numerous individuals requesting that the applicant be granted a waiver; a copy of a birth certificate for the applicant’s spouse; and a copy of a marriage certificate for the applicant and her spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, the applicant's spouse asserts that the living conditions in Mexico are too dangerous for the applicant to live there, that he is suffering from depression, has lost significant weight and was never ill in the United States where he had a great doctor. She also states that because Mexico is such a dangerous place and the way of life is so different, she has to support both the applicant and herself. Previously, the applicant's spouse asserted that she had assisted her husband at his job, and had subsequently lost that job after her husband returned to Mexico. She further asserted that she had fallen behind on her rent and other bills, that her landlord was contemplating evicting her, that she had been sick and the applicant had been unable to assist her financially because he was barely able to support himself in the Mexican economy, and that she and her applicant were unable to start a family while separated. She also stated that she and her husband love each other very much, that she was previously raped and that her husband helped her through her trauma mentally and emotionally.

As noted above, hardship to the applicant in a waiver proceeding will be considered only to the extent that it creates hardship for a qualifying relative. In this case, the record does not support the claims made by the applicant's spouse concerning the hardship her husband faces in Mexico. Neither does it establish how the hardship she indicates he is experiencing affects her. Although the AAO notes that the applicant's spouse has submitted two documents that are in Spanish, it will not consider them. Any document containing foreign language submitted to United States Citizenship and Immigration Services (USCIS) must be accompanied by a certified, full English-language translation. Accordingly, the AAO does not find the record to establish that the applicant's spouse would experience extreme hardship on the basis of hardship to the applicant.

The record also fails to document the applicant's spouse's claims regarding her financial hardship. Although the record contains a statement from the applicant's spouse's landlord stating that he would evict the applicant's spouse for nonpayment of rent, the record does not demonstrate that the applicant's spouse is currently behind on her rent or that she has been evicted. The record also fails to document the monthly financial obligations of the applicant's spouse or that she is financially supporting the applicant in Mexico. Although the AAO acknowledges the applicant's spouse's expressed desire to start a family and the emotional hardship she is experiencing as a result of her separation from the applicant, the record does not include documentary evidence, e.g., an evaluation by a licensed medical professional, that these hardships are greater than those normally created by the exclusion of a spouse. 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)).

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. The applicant's spouse asserts that it is too dangerous to live in Mexico, that the way of life in Mexico is very different and that the applicant cannot make a living there. However, these assertions are not supported by any evidence submitted into the record, such as country conditions reports or other materials that corroborate that residing in Mexico would constitute an extreme hardship or that employment would be unavailable. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

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 would face extreme hardship if he is refused admission. The AAO recognizes that the applicant's spouse would endure hardship as a result of the applicant's inadmissibility. The record, however, does not distinguish her hardship from that commonly associated with removal and separation, and it does not, therefore, rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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 rests with the applicant. *See* 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.