

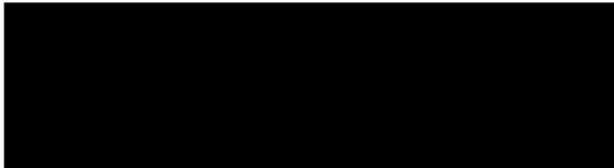
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U.S. Citizenship
and Immigration
Services

H2



FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
CDJ 2004 760 489

Date: SEP 29 2009

IN RE: [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).

Perry Rhew
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, [REDACTED] 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 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 and seeking admission within 10 years of his last departure from the United States. The applicant 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), in order to return to the United States to join his U.S. citizen spouse, [REDACTED]

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the applicant provided substantial supporting evidence that fully reflects the extent of hardship that would be suffered by his immediate relatives. In support of the application, the record contains, but is not limited to, copies of the applicant's extended family members' U.S. birth certificates and lawful permanent resident cards, and a statement from the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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 shows that the applicant initially entered the United States without inspection when he was six or seven years old in 1989. Time in unlawful presence begins to accrue on April 1, 1997, the date of enactment of unlawful presence provisions under the Act. However, no period of time in which an alien is under eighteen years of age shall be taken into account in determining the period of unlawful presence in the United States. *See* Section 212(a)(9)(B)(iii)(I) of the Act. The applicant's date of birth is July 12, 1982. The applicant accrued unlawful presence from July 2000 until his departure from the United States in November 2005. The applicant is attempting to seek admission into the United States within ten years of his November 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of his last departure. The applicant does not dispute his inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 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 (BIA) 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 United States 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she 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 reflects that the applicant wed [REDACTED], a U.S. citizen, on April 25, 2003. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes.¹ The applicant and her spouse have a six year old U.S. citizen child, [REDACTED]

Hardship to the applicant's child will be considered insofar as it results in hardship to the applicant's spouse.

On appeal, counsel asserts that the applicant's spouse is maintaining her household in the United States and a household for her husband in Mexico. Counsel states that the applicant's spouse's income as an Administrative Assistant is not sufficient to maintain both households. Counsel furnished an affidavit from the applicant's spouse, dated June 5, 2007. The applicant's spouse asserts that her economic hardship is devastating. She states that her husband can barely survive and he has no money to send to her and their son. She states that she cannot survive on only her pay and cannot send her husband money. She states that since the applicant's departure she has lost half her household income and has been forced to maintain two separate households. She states that she has to ask her family members for financial assistance.

Although the AAO will consider financial hardship as a factor contributing to a finding of extreme hardship, such hardship must be demonstrated in the record. The record in the instant case fails to demonstrate financial hardship to the applicant's spouse. No documentation has been provided as evidence of the applicant's spouse's income and expenses. Further, the record does not show her remittances to the applicant or otherwise demonstrate how she is supporting him in Mexico. As such, the AAO does not have sufficient documentation to fully assess the applicant's spouse's financial situation. 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)). Moreover, the applicant's spouse states in her affidavit that the applicant is residing in Mexico with his aunt. She states that her brother and sister help her with child care while she is working. The support the applicant and his spouse are receiving from family members indicates that the applicant's spouse is not financially maintaining two households alone. Accordingly, the AAO finds that evidence of financial hardship is not demonstrated by the record.

Counsel asserts that if the applicant remains separated from his spouse and child, his child will be deprived of his father's presence and support. The applicant's spouse states in her affidavit that without the applicant there are no plans, no future, no loves and no success. She states that she is left with a sense of emptiness in her heart and is seeing her plans and dreams of being a beautiful family and growing old together in the U.S. crushed.

The AAO recognizes that the applicant's spouse is suffering emotionally as a result of her separation from the applicant. Her situation, however, is typical of individuals separated as a result of removal

¹ Counsel noted, on appeal, that the applicant's mother is a U.S. lawful permanent resident. The applicant's birth certificate reflects that his mother's name is [REDACTED]. The record contains no evidence of [REDACTED]

U.S. lawful permanent residence. Nor does it contain evidence of hardship to [REDACTED]. Therefore, the AAO will only consider hardship to the applicant's U.S. citizen spouse for purposes of these proceedings.

or inadmissibility and does not rise to the level of extreme hardship based on the record. 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 point made in this and prior decisions on this matter is that 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); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (“the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.”).

Counsel asserts that if the applicant's spouse follows the applicant to Mexico, she would be unable to obtain employment in the country. Counsel states that in the event that she was able to get a job, it would not be nearly lucrative enough to contribute meaningfully to the family's financial support. Counsel states that the financial security of the applicant's family would be put in ruinous financial consequences that would ultimately lead to the level of extreme poverty. The applicant's spouse asserts in her affidavit that she is bilingual, but does not read or write Spanish. She states that she does not know anything about the Mexican culture. She states that employment in Mexico would be a big burden for her husband and herself. She states that she would face a language barrier and her husband would face a lack of living wage jobs available in Mexico.

The AAO finds that assertions regarding the applicant and her husband's inability to find employment opportunities in Mexico are based on speculation alone. There is nothing in the record to indicate that they would be unable find gainful employment in Mexico. The record does not reflect that the applicant's spouse has inquired about or researched employment opportunities in Mexico. Nor does the record reflect where the applicant is currently employed. In *Matter of Cervantes-Gonzalez*, the BIA noted that the respondent's wife spoke Spanish and the majority of her family is originally from the respondent's country citizenship, Mexico. The BIA stated that based on these factors the respondent's wife “should have less difficulty adjusting to live in a foreign country.” 22 I&N Dec. 560, 567 (BIA 1999). The record in the present case reflects that the applicant's spouse is bilingual in Spanish and English and her U.S. lawful permanent resident parents are natives of Mexico. Therefore, she should have less difficulty in adjusting to language, culture and residence in Mexico.

Counsel asserts that the applicant's spouse has strong family ties in the United States. Counsel states that all of the applicant and his spouse's immediate family members are residing in the United States legally. The applicant's spouse asserts in her affidavit that she and her eight siblings were raised in Los Angeles in a close and loving family. She states that she might have to sever family bonds by ripping her son away from his cousins and taking him to a country he has never been to.

The AAO acknowledges that if the applicant's spouse moves to Mexico, she would suffer emotional hardship as a result of her separation from her parents and siblings. However, her situation is typical of individuals separated as a result of removal or inadmissibility, and does not, alone, rise to the level of extreme hardship. There is no indication in the record that the applicant's spouse's family members would not be able to visit her in Mexico. Further, the applicant's spouse has not discussed any family obligations that would cause her to suffer extreme hardship if she departed the United States. The AAO notes that United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. The Ninth Circuit Court of Appeals in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

Counsel states that Mexico is currently experiencing a widespread drug war that has claimed hundreds of lives. Counsel states that this violence has been especially heavy in Mexico City, where the applicant and his spouse would live. Counsel furnished reports on the drug related violence in Mexico from National Public Radio, Wordpress.org and The Christian Science Monitor. The U.S. Department of State reports the following problematic country conditions on drug related crime in Mexico:

Visitors to the U.S. – Mexico border region, including cities such as Tijuana, Ciudad Juarez, Nuevo Laredo, Nogales, Reynosa, and Matamoros, should remain alert and be aware of their surroundings at all times.

Some border cities have seen an increase in violence over the past year, some of which has been directed against U.S. citizens. Local police forces have been ineffective in maintaining security in some regions along the border. Drug-related violence has increased dramatically in recent months and shows no sign of abating. While U.S. citizens not involved in criminal activities are generally not targeted, innocent bystanders are at risk from the increase in violence in the streets of border cities.

In Ciudad Juarez, Monterrey, Nuevo Laredo, Matamoros, Nogales, Reynosa, and Tijuana, shootings have taken place at busy intersections and at popular restaurants during daylight hours. The wave of violence has been aimed primarily at members of drug-trafficking organizations, the military, criminal justice officials, and journalists. However, foreign visitors and residents, including U.S. citizens, have been among the victims of homicides and kidnappings in the border region. U.S. citizens are urged to be especially aware of safety and security concerns when visiting the border region

and exercise common-sense precautions such as visiting only legitimate business and tourist areas of border towns during daylight hours. U.S. citizens who frequently make routine visits to border cities should vary their routes and times and are urged to park in well-lighted, guarded and paid parking lots. Exercise caution when entering or exiting your vehicle and instruct all fellow travelers to enter and exit the vehicle safely and quickly.

The reports demonstrate that drug related violence in Mexico is primarily focused on the border cities. The evidence does not reflect that such violence is widespread throughout the country. There is no evidence in the record to suggest that the applicant and his spouse would be unable to establish their lives in a part of Mexico that is less affected by drug violence and crime.

Counsel asserts that the economic and medical conditions do not stand in comparison to those of the United States. Counsel states that the applicant and his spouse are living in constant fear that their child will contract an extremely dangerous disease that could not be cured in Mexico. The applicant's spouse asserts in her affidavit that she knows the future in Mexico would be a nightmare. She states that her and her son's health is a concern because they did not do well there. She states that she and her son became sick when they went to visit the applicant in Mexico. She states that they could only eat the applicant's aunt's food and had to sterilize everything. She states that if they moved to Mexico, they would need to find a place to live, jobs and a school for their son.

The AAO finds that the possible threat of illness or disease to the applicant and her child are not demonstrated by the record. The record does not demonstrate that there is an "extremely dangerous disease" that is isolated to Mexico. Nor does the record show that either the applicant or her son have an on-going medical condition that renders them particularly vulnerable to illness. Further, the record does not contain any medical reports related to the illnesses the applicant's spouse and son acquired during their visit to Mexico. As stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. The AAO notes that finding residence and employment, registering a child in school, and taking precautions with food and water consumption are not necessarily hardships, but the common inconveniences associated with relocation to a foreign country.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility 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 remains entirely 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.