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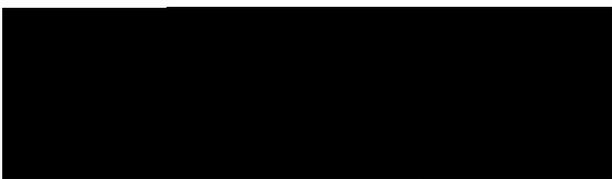
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H2



FILE: [REDACTED]
(CDJ 2004 810 668)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: **JAN 07 2010**

IN RE: [REDACTED]

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).

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 is a native and citizen of Mexico. She 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 her last departure. She is married to a United States citizen. She 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 her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 11, 2007.

On appeal, the applicant's spouse asserts that it has been hard on him and his daughter to take care of his two sons while the applicant resides in Mexico, and asks that United States Citizenship and Immigration Services (USCIS) approve her waiver application.

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 July 2001 and remained until she departed voluntarily in January 2006. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she 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 or her children 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 and daughter; statements from the assistant principal at [REDACTED] pertaining to two of the applicant’s children; a newspaper clipping referencing the applicant’s daughter; and copies of bills and credit card statements in the applicant’s spouse’s name.

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

The applicant’s spouse has submitted a statement indicating that it has been difficult for him and his oldest daughter to care for his and the applicant’s two sons during the applicant’s absence. He states that he works long hours, and that his daughter is about to go to college and he needs the applicant in the United States to help care for their family. The applicant’s daughter has also submitted a

statement, stating that she is sad that her mother cannot reside in the United States with her family, and that it has been hard on her to care for her two brothers during her mother's absence.

The record contains statements from [REDACTED], an assistant principal at [REDACTED] in Houston, Texas. She asserts in her first statement that the applicant's two sons, having recently transferred into the school district, will have to repeat their current academic grade, and that they are currently residing with their aunt, as the applicant's spouse has been transferred to Florida by his employment. In her second statement, [REDACTED] indicates that the children's academic performance has improved but that their aunt has informed her that they continue to miss the guidance and nurturing of their mother, and that their mother's presence will help them in their educational advancement. While the AAO acknowledges these statements, it would note that hardship to the applicant's children is not directly relevant to a determination of extreme hardship in § 212(a)(9)(B) proceedings and that the record fails to demonstrate how any hardship the applicant's sons might experience as a result of her inadmissibility would affect their father, the only qualifying relative. Moreover, the record fails to include the documentary evidence necessary to establish that the applicant and her spouse have children or the status of these children in the United States.

While the AAO acknowledges the desire of the applicant's spouse to have his wife reside in the United States, the hardship factors described in the record, even when considered in the aggregate, do not rise to the level of extreme. Therefore, the applicant has not established that her spouse would experience extreme hardship if she is excluded and he remains in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. In the present case, the applicant has not addressed the impacts on her spouse if he were to relocate to Mexico with her. As such, the record also does not establish that the applicant's spouse would experience extreme hardship if he were to join the applicant in Mexico.

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 would face extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's husband will experience hardship as a result of the applicant's inadmissibility. The record, however, does not distinguish his hardship from that commonly associated with removal and exclusion, 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 her 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 she 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.