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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

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FILE:

[REDACTED]

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

CDJ 2004 569 119 (RELATES)

JAN 08 2010

[REDACTED]

(RELATES)

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i)

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 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. She 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 her 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 her U.S. lawful permanent resident father, [REDACTED].¹

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her U.S. lawful permanent resident father, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, the applicant's father asserts that the applicant entered the United States legally. He states that the applicant's two young children are currently with the applicant in Mexico. He states that the children have been to the doctor several times because of the food and water in Mexico. He states that he does not have enough money to support his daughter and her family in Mexico and his family in the United States. He states that the applicant is unable to work in Mexico because she has no one to take care of her children. He states that if the applicant was in the United States, she would have her mother to care for her children while she worked.

In support of the application, the record contains, but is not limited to, copies of the applicant's Form I-94 (Departure Record) and V2 visa, the applicant's father's earnings and deductions statements and 2005 Form W-2 (Wage and Tax Statement), a money order and phone bill. The entire record was reviewed and considered in rendering a decision on the appeal.²

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

¹ The applicant listed her mother, [REDACTED] as a qualifying relative on her waiver application. She indicated that her mother is a U.S. lawful permanent resident. However, the record contains no evidence of her mother's lawful permanent resident status or alien number. Nor does it contain evidence of hardship to the applicant's mother. Therefore, only hardship to the applicant's father will be considered for purposes of these proceedings.

² The record also contains two letters from the applicant's father initially filed with the waiver application. However, these letters are written in Spanish without corresponding certified English translations. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in these proceedings.

(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 director determined that the applicant entered the United States without inspection in June 2004 and remained in the United States until departing in March 2006. The director concluded that the applicant accrued unlawful presence in excess of one year, and therefore, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant's father contests the director's findings on appeal. He notes that the applicant entered the United States legally on April 9, 2003.

Upon review of the record, the AAO finds that while the director's conclusion that the applicant is inadmissible under 212(a)(9)(B)(i)(II) of the Act is correct, the factual findings presented to reach this conclusion are in error. The record reflects that on April 9, 2003, the applicant was admitted to the United States at El Paso, Texas as a V-2 nonimmigrant. The applicant was authorized to stay until March 28, 2004. However, the applicant remained in the United States until March 2006, and did not apply for an extension of status. Consequently, the applicant accrued unlawful presence from March 29, 2004 until March 2006. The applicant is attempting to seek admission into the United States within ten years of her March 2006 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(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 her last departure.

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 herself 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 is the daughter of [REDACTED] a U.S. lawful permanent resident and citizen of Mexico. The applicant’s father is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant has an eight-year-old Mexican citizen child, [REDACTED], and a four-year-old U.S. citizen child, [REDACTED].

The applicant’s father asserts that the applicant’s two young children are currently with the applicant in Mexico. He states that the children have been to the doctor several times because of the food and water in Mexico. He states that he does not have enough money to support his daughter and her family in Mexico and his family in the United States. He states that the applicant is unable to work in Mexico because she has no one to take care of her children. He states that if the applicant was in the United States, she would have her mother to care for her children while she worked.

The AAO notes that several of the aforementioned statements address the hardship that the applicant and her children would suffer if the applicant were refused admission. Section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility is applicable solely where an applicant establishes extreme hardship to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant and/or an applicant’s child. In the present case, the applicant’s father is the only qualifying relative under the statute, and the only relative for whom the hardship determination is permissible.

The applicant's father's statements indicate that he would suffer financial hardship if the applicant were denied admission. He states that he does not have enough money to support his daughter and her family in Mexico while also supporting his family in the United States. As corroborating evidence, the record contains the applicant's father's Form W-2 and earnings and deductions statements. The applicant's father's Form W-2 reflects that in 2005 he earned \$7,680. His earnings and deductions statements for the pay periods November 6, 2006 until November 12, 2006, December 4, 2006 until December 10, 2006, January 1, 2007 until January 7, 2007, January 29, 2007 until February 4, 2007 and March 12, 2007 until March 18, 2007 reflect that he earned \$8.00 per hour for those periods. The AAO acknowledges that the applicant's father's income is below the U.S. Department of Health and Human Services 2007 federal measure of poverty for a family of three. The U.S. Department of Health and Human Service's 2007 federal poverty guidelines reflect that an annual income of less than \$17,170 for a family of three constitutes poverty, thus allowing for financial eligibility for certain federal program purposes.³

However, the applicant's father has failed to present a clear picture of the financial impact of his daughter's departure from the United States. The AAO observes that the applicant's daughter resided in Mexico with her son, [REDACTED], prior to their admission to the United States. Neither the applicant nor her father has explained how the applicant supported her son during her prior residence in Mexico. Further, the applicant listed on her waiver application her mother, [REDACTED] as living with her father in the United States. The applicant has not indicated whether her mother is employed, and thus, contributing to the household income. Moreover, the applicant's father asserts that the applicant has no one to take care of her children since all of his family is in the United States. However, he fails to describe his familial relationships and whether his family members can offer financial assistance to the applicant while she resides in Mexico. Finally, the record does not show where the applicant is currently residing in Mexico, how the applicant is supporting herself and her children, and whether the applicant's father is sending the applicant remittances. The record only contains a copy of a money order from the applicant's father issued to [REDACTED]. There is no indication in the record of the significance of this money order and to whom it was issued. Given the lack of detail, the AAO cannot conclude that the applicant's father is suffering from extreme financial hardship due to the applicant's inadmissibility.

Furthermore, the applicant's father has only discussed the hardship he would suffer if he remains in the United States separated from the applicant. The applicant's father has not asserted, or submitted evidence to demonstrate, that he would suffer extreme hardship in his country of citizenship, Mexico, if he relocated with the applicant there. Accordingly, the AAO cannot determine that the applicant's father would suffer extreme hardship if he relocated to Mexico.

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.

³ <http://aspe.hhs.gov/POVERTY/07poverty.shtml>

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.

Beyond the decision of the director, the AAO finds under its de novo review that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting material facts to procure admission into the United States.⁴ The record contains a Form I-213, Record of Deportable/Inadmissible Alien, which reflects that the applicant arrived on July 14, 2007 at the Laredo, Texas port-of-entry and fraudulently presented her sister's Form I-551, Permanent Resident Card, as her own identity document for admission into the United States. The applicant also fraudulently presented her nephew's North Carolina birth certificate as her son's identity document for his admission into the United States. The applicant was taken into secondary inspection where she admitted these facts in a sworn statement. The AAO finds that the applicant's actions render her inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting material facts.

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.

⁴ The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).