

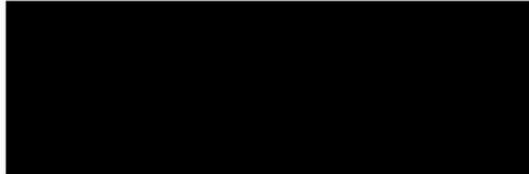
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H<sub>2</sub>



FILE:

CDJ 2004 782 581

Office: MEXICO CITY (CIUDAD JUAREZ)

**JAN 08 2010**

Date:

IN RE:



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:

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. 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. He was further found inadmissible under section 212(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(1)(A)(iii), as an alien who is determined to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior. The applicant seeks waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(g) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(g).

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, the applicant's spouse asserts that she and the applicant are aware that if the applicant is approved he will have to go through rehabilitation. She states that she is willing to finance all of the rehabilitation expenses. She requests that the applicant not be punished twice by refusing his admission to the United States because of his past crimes.

In support of the application, the record contains, but is not limited to, letters from the applicant's spouse, court records and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(a) Classes of Aliens Ineligible for Visas or Admission.--Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.--

(A) In general.--Any alien-

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General [now Secretary of Homeland Security])—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of

the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior. . . is inadmissible.

(B) Waiver authorized.--For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

Section 212(g) of the Act provides, in pertinent part:

(g) The Attorney General may waive the application of---

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the [Secretary] after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

The record reflects that the panel physician who conducted the applicant's medical examination for his visa interview referred the applicant for a psychological evaluation because of his arrests for driving while under the influence (DWI) of alcohol. The psychologist classified the applicant as having a Class A medical condition, Alcohol Abuse, which is in partial remission with evidence of harmful behavior due to his arrest for DWI in May 2004. The District Director found the applicant inadmissible under section 212(a)(1)(A)(iii) of the Act on this basis.

Regulations at 8 C.F.R. § 212.7(b) govern aliens with certain mental conditions, who are eligible for immigrant visas but require the approval of waivers of grounds of inadmissibility. The regulations require that the applicant submit the waiver application and a statement to the appropriate USCIS office indicating that arrangements have been made to provide the alien's complete medical history, including details of any hospitalization or institutional care or treatment for any physical or mental condition; the alien's current physical and mental condition, including prognosis and life expectancy; and a psychiatric examination. 8 C.F.R. § 212.7(b)(4). "For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery." *Id.* The medical report must then be forwarded to the U.S. Public Health Service for review. *Id.* These regulations further provide:

(ii) *Submission of statement.* Upon being notified that the medical report has been reviewed by the U.S. Public Health Service and determined to be acceptable, the alien or the alien's sponsoring family member shall submit a statement to the consular or [USCIS] office. The statement must be from a clinic, hospital, institution, specialized facility, or specialist in the United States approved by the U.S. Public Health Service. The alien or alien's sponsor may be

referred to the mental retardation or mental health agency of the state of proposed residence for guidance in selecting a post-arrival medical examining authority who will complete the evaluation and provide an evaluation report to the Centers for Disease Control. The statement must specify the name and address of the specialized facility, or specialist, and must affirm that:

(A) The specified facility or specialist agrees to evaluate the alien's mental status and prepare a complete report of the findings of such evaluation.

(B) The alien, the alien's sponsoring family member, or another responsible person has made complete financial arrangements for payment of any charges that may be incurred after arrival for studies, care, training and service;

(C) The Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA. 30333 shall be furnished:

(1) The report evaluating the alien's mental status within 30 days after the alien's arrival; and

(2) Prompt notification of the alien's failure to report to the facility or specialist within 30 days after being notified by the U.S. Public Health Service that the alien has arrived in the United States.

(D) The alien shall be in an outpatient, inpatient, study, or other specified status as determined by the responsible local physician or specialist during the initial evaluation.

The record contains a Centers for Disease Control (CDC) Form 4.422-1, Statements in Support of Application for Waiver of Inadmissibility. Part I of CDC form 4.422-1 reflects that the Department of Health and Human Services Public Health Service (PHS) received the required medical documentation regarding the applicant's present condition. The PHS reviewing official, [REDACTED], Division of Global Migration and Quarantine, National Center for Infectious Diseases, classified the applicant as having a Class A medical condition, Alcohol Abuse, which renders him inadmissible under section 212(a)(1)(A)(iii)(I). Part II of CDC form 4.422-1 shows that, pursuant to 8 C.F.R. § 212.7(b)(4)(ii), the applicant obtained the required statement from [REDACTED] at a PHS-approved facility, Salud Family Health Center, Longmont, Colorado. The applicant's wife completed Part III of Form CDC 4.422-1, attesting that necessary arrangements for further examination of the applicant will be made upon his entry to the United States. On June 15, 2006, [REDACTED] approved the applicant's Form CDC 4.422-1, thus certifying PHS's opinion that appropriate follow-up care will be provided upon the applicant's entry to the United States, and that PHS has no objection to his entry. Therefore, the AAO finds that the applicant has satisfied the regulatory requirements for a section 212(g) waiver.

However, the record reflects that the applicant is also inadmissible under section 212(a)(9)(B) of the Act, 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.

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 entered the United States without inspection in May 1994. The applicant remained in the United States until departing in March 2006. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of unlawful presence provisions under the Act, until March 2006. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of his March 2006 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.

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 June 28, 2003. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and his spouse have a four-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.

The record contains a letter from the applicant's spouse which was initially filed with the applicant's waiver application. The applicant's spouse asserts in her letter that it has been very difficult to raise a child on her own and work to meet every month's bills. She states that the applicant has always been there to support her and take good care of her. She states that the applicant is a good father to their son. She states that five of the applicant's siblings legally reside in the United States. She states that the applicant's parents, who reside in Mexico, are poor and financially depend on the applicant. She states that if the applicant is denied admission to the United States, she may lose the house she purchased with the applicant. She states that she is concerned about ruining her credit. She states that she is good at managing her money and paying her credit card bills. She states that she is concerned about losing her house and having to rely on welfare. She states that she has an opportunity for a promotion at work, but her husband is not present to offer moral support and watch their child.

The AAO will consider financial hardship as a factor contributing to a finding of extreme hardship. However, the record in the present case fails to provide a clear picture of the applicant's spouse's financial situation. The applicant's spouse furnished a copy of her monthly mortgage statement, checking account statement and automobile loan statement. However, she failed to provide any evidence of her monthly income. Nor is there any evidence in the record of the applicant's income prior to his departure from the United States. 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)). While the applicant's spouse's unsupported assertions are relevant and have been considered, they are of little weight in the absence of supporting evidence. For these reasons, the AAO cannot conclude that the applicant's spouse is suffering from financial hardship due to the applicant's inadmissibility.

The AAO recognizes that the applicant's spouse and child are suffering emotionally as a result of their separation from the applicant. Their situation, however, is typical of individuals separated as a result of removal 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 (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); *Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> 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.").

Furthermore, the applicant's spouse has only discussed the hardship she would suffer if she remains in the United States separated from the applicant. The applicant's spouse has not asserted, or submitted evidence to demonstrate, that she would suffer extreme hardship in Mexico if she relocated with her children there. Accordingly, the AAO cannot determine that the applicant's spouse would suffer extreme hardship if she 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. 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.

Finally, as noted by the District Director, a Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints reveals that on March 14, 1999 he was arrested by the Longmont, Colorado Police Department and charged with the felony offenses of *unlawful narcotics*, *unlawful use of a*

*controlled substance* and *controlled substance possession*. The FBI report further reveals that on May 13, 2001 and July 22, 2004, the applicant was arrested by the Longmont, Colorado Police Department and charged with *driving under the influence of liquor*, a misdemeanor offense.

On appeal, the applicant's spouse furnished a court report entitled "Alcohol/Drug Driving Safety Program Evaluation & Referral Recommendation Report," which shows that the applicant was convicted of *driving while ability impaired* for his May 13, 2001 and July 22, 2004 arrests. However, the applicant's spouse failed to submit the disposition of the applicant's March 14, 1999 controlled substance arrest.

A controlled substance conviction is a ground of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II). There is no other waiver available to an alien inadmissible under section 212(a)(2)(A)(i)(II) of the Act except for a single offense of simple possession of 30 grams or less of marijuana. *See* Section 212(h) of the Act, 8 U.S.C. § 1182(h). Should the applicant reapply for an immigrant visa, he must submit the disposition related to his March 14, 1999 controlled substance arrest to establish that he is not inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

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.