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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:

(CDJ 2004 654 359)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: **JAN 21 2010**

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).

Perry Chew
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 naturalized 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 November 17, 2006.

On appeal, the applicant states that his family is experiencing extreme hardship due to his exclusion.

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 2002 and remained until he departed voluntarily in December 2004. As the applicant resided unlawfully 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 or his 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 and his spouse, including a statement in Spanish;¹ a statement from the president of the applicant’s spouse’s branch of the Church of Jesus Christ of Latter-day Saints; statements from a counselor and teacher at the school attended by the applicant’s son; and a statement from a counseling secretary at the school attended by the applicant’s daughter.

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

¹ Pursuant to 8 C.F.R. § 103.2(b)(3), any documents in a foreign language that are submitted to U.S. Citizenship and Immigration Services (USCIS) must be accompanied by a certified English-language translation. As one of the applicant’s spouse’s statements is written in Spanish and not accompanied by a translation, the AAO will not consider it in this proceeding.

In a January 27, 2006 statement, the applicant's spouse asserts that she is experiencing financial hardship due to the applicant's exclusion and that she is living with her brother who is providing her with room and board. She also states that her children are experiencing emotional hardship and that her son is emotionally disturbed as a result of his father's absence. On appeal, the applicant states that he has three children who are trying to provide for themselves with minimal assistance from some extended family members in the United States and that his spouse has been under stress. Letters from the applicant's son's 4th grade teacher and a school counselor indicate that the applicant's son greatly misses his father. A letter from the applicant's spouse's branch president, [REDACTED] reports that the applicant's spouse is struggling financially, that their church has provided assistance to her and her children, and that she is experiencing symptoms of depression as a result of her separation from the applicant.

While the AAO acknowledges the claims of the applicant, his spouse and [REDACTED] regarding the hardships the family is facing, it does not find their statements sufficiently probative to establish that the applicant's spouse is experiencing extreme hardship in the absence of the applicant. Although the applicant's spouse and [REDACTED] both assert that she is struggling financially, the record offers no documentary evidence of her income or her financial obligations that would allow the AAO to **determine the extent of her financial hardship.** [REDACTED] statement that the applicant's spouse is showing symptoms of depression is also unsupported by documentation that would establish the severity of that depression and its impact on the applicant's spouse's ability to function independently. While the AAO acknowledges the claims of hardship relating to the applicant's children, it again notes that hardship to an applicant's children is not directly relevant to a determination of extreme hardship in 212(a)(9)(B) waiver proceedings and that the record fails to demonstrate how any hardship the applicant's children might experience would affect their mother, the only qualifying relative. Accordingly, the AAO does not find the record to establish that the applicant's spouse would suffer extreme hardship if the applicant's waiver application were to be denied and she remained in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. The applicant asserts on appeal that staying in Mexico as a family would make emotional and economic sense. However, he states that, if the family relocates to Mexico, it would deprive his children of the opportunities that he and his wife have tried to provide for them. He notes that, in ten years time, his children would not be an asset to the United States and would have a difficult time adapting to U.S. society as they would have no special skills and would not speak English. The applicant's children, however, as just discussed, are not qualifying relatives in this proceeding and the record fails to establish how the hardships they might experience upon relocation would affect their mother, the qualifying relative. As such, the record fails to establish that the applicant's qualifying relative, his spouse, would experience extreme hardship if she were to join him 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 spouse would face extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse will experience hardship as a result of the applicant's inadmissibility. The record, however, fails to distinguish her 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 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.