

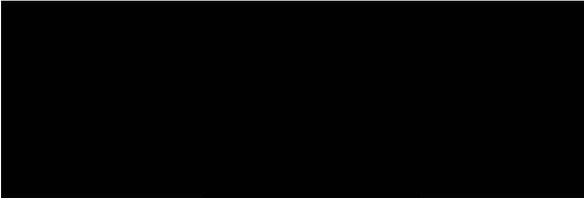


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
(CDJ 2004 741 353)

Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: **JAN 26 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 April 10, 2007.

On appeal, the applicant states that her husband is suffering financially and emotionally, and that her exclusion is resulting in extreme hardship to her husband and children.

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 establishes that the applicant entered the United States without inspection 1992 and remained until she departed voluntarily in March 2006. Therefore, the applicant was unlawfully present in the United States for more than one year, from January 29, 2005, the date of her 18th birthday, until March 2006. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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 her spouse; a psychological evaluation of the applicant’s spouse and daughter; letters in support of the waiver; and a copy of the marriage certificate for the applicant and his spouse.

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

The applicant’s spouse states that he is suffering emotionally to the point where his work has been affected and he is barely able to provide care for his children. He states that his daughter is unable to concentrate at school due to the emotional distress she has experienced as a result of being separated from her mother.

[REDACTED], a licensed professional counselor who interviewed and tested the applicant's spouse and observed his daughter, states that the applicant's spouse is suffering from Major Depressive Disorder and his daughter from Adjustment Disorder with Mixed Anxiety. He reports that the applicant's spouse is undergoing further counseling and has been prescribed an antidepressant to help him continue to function.

Although the input of any mental health professional is respected and valuable, the AAO notes that the brief evaluation of the applicant's spouse submitted for the record fails to provide a meaningful discussion of his emotional state. While the AAO acknowledges the testing performed by [REDACTED], it finds the reported results to be insufficient proof that the applicant's spouse is experiencing extreme emotional hardship in the absence of a discussion of the clinical interviews conducted by [REDACTED]. It further observes that two of the factors on which [REDACTED] based his conclusions, the applicant's spouse's financial hardship and his poor job performance, are not supported by the record. The record contains no evidence that demonstrates that the applicant's spouse is supporting the applicant in Mexico or that he has had his automobile repossessed as a result of his financial problems. It further fails to document that the applicant's spouse's job performance has declined or that, as claimed by the applicant's spouse, his emotional state is jeopardizing his employment. Accordingly, the AAO finds the submitted evaluation to be of limited value to a determination of extreme hardship.

The AAO also acknowledges the evaluation of the applicant's spouse's daughter by [REDACTED] and the letters from the applicant's spouse's pastor and the ESL teacher at the school attended by the applicant's daughter, which discuss the hardship she is experiencing in her mother's absence. However, as previously discussed, the applicant's daughter is not a qualifying relative for the purposes of this proceeding and the record does not document how any emotional hardship she may be suffering in the applicant's absence affects her father, the only qualifying relative.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant or remains in the United States. As the applicant has not articulated any impacts on her spouse should he join her in Mexico, the AAO is unable to find that the applicant's spouse would suffer extreme hardship upon relocation.

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 her 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.