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U.S. Citizenship
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MAR 05 2010

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)
(RELATES)

Date:

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h), 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 to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(h) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(h) in order to return to the United States to join his U.S. citizen spouse.

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 is suffering financial and emotional hardships as a result of her separation from the applicant.

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

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 February 2000. The applicant remained in the United States until departing in January 2006. The applicant accrued unlawful presence from February 2000 until January 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 January 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.

Section 212(a)(2)(A) of the Act states, in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if —

....

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present.

However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

A Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints reveals that on December 2, 2002 the applicant was arrested by the Downers Grove, Illinois, Police Department, and charged with contributing to the delinquency of a minor and obstructing justice. The record further reflects that on February 13, 2003, the applicant was arrested by the Downers Grove, Illinois, Police Department, and charged with contributing to the delinquency of a minor.

The consular officer who conducted the applicant's immigrant visa interview on February 17, 2006 stated in the Refusal Worksheet (OF-194):

Applicant brought in police arrest reports for two arrests . . . Arrests were for contributing to the delinquency of a minor. The minor, female, had been truant from school on several occasions. Bene claims he was given 1 yr. probation for that charge and giving false info to the police officer. According to court disp. he plead [sic] guilty, placed under 1 yr. supervision, and terminated his sentence satisfactorily.

Similarly, the consular officer issued a memo to the file, which states, "On December 2, 2002 applicant was arrested by the police for contributing delinquency minor; he claims that he gave a ride to his girlfriend and she was 17. Taken to jail for about 15 days and given one year probation, records attached."

The District Director received the applicant's record of proceedings and noted in the February 16, 2007 denial notice, "No court records or other record of outcome for these arrests have been provided. The applicant states that he [sic] given one-year probation for the first arrest and he did not appear for the hearing held for the second arrest. The applicant's statement and the record do not support a finding of excludability pursuant to section 212(a)(2)(A)(i) of the Act."

The record of proceedings has been carefully reviewed by the AAO. The AAO finds that the record does not contain any court or police records related to the applicant's arrests nor does it contain an admission from the applicant. Without this evidence, the AAO does not have sufficient information to conclude that the applicant has a conviction or convictions rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act for crimes involving moral turpitude.

However, the applicant remains inadmissible under section 212(a)(9)(B)(i)(II) of the Act. 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 applicant’s spouse asserts in her statement filed on appeal that she is not working because she could not handle the applicant’s departure to Mexico. She states that after his departure she started to feel desperate, her head hurt, she could not concentrate, and she wanted to sleep all day and “not think about what was going on.” She states that her husband gave her support even though he was thousands of miles away. She states that she needs her husband because she still has to make monthly payments of \$370.00 for her truck. She states that she has to pay her credit card debt of \$4,000.00. She states that this is too much for her to handle. She states that the applicant’s former employer would like him to return because he is a good employee. She states that she and the applicant love each other very much. She states that the applicant is a nice person and came to the United States to have a better life and to work.

The AAO finds that the applicant’s spouse’s assertion regarding the economic strain of her separation from the applicant is not supported by the record. There is no documentation in the record related to the applicant’s spouse’s employment and income. Further, the record does not contain documentation of her monthly mortgage or rent payments, automobile loan or lease payments, and other recurrent expenses. As such, the AAO does not have sufficient documentation to fully assess the applicant spouse’s financial situation. 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)). Although the applicant's spouse's unsupported assertions are relevant and have been considered, they are of little weight in the absence of supporting evidence.

The applicant's spouse claims she is suffering psychological distress as a result of her separation from the applicant. She states, "I started to get desperate, my head hurted [sic] a lot, I couldn't concentrate, and I just wanted to sleep all day" The AAO recognizes that the applicant's spouse is suffering emotionally as a result of her separation from the applicant. However, the applicant's spouse has not submitted a psychological evaluation from a licensed psychologist assessing the implications of the applicant's departure on her mental health. As previously stated, going on record without supporting evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if she remains in the United States without the applicant, but she has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant's spouse, and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship. 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.

Finally, the AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad. In the instant case, the applicant's spouse has not asserted, or submitted evidence to demonstrate, that she would suffer extreme hardship in her native country of Mexico if she relocated with the applicant 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.

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.