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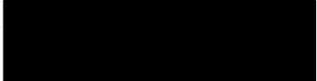
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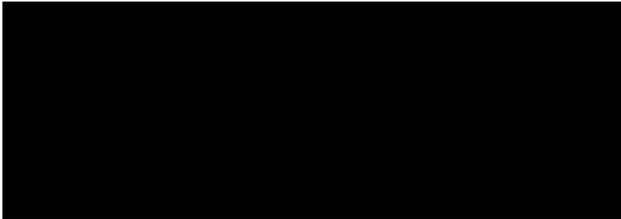
Applicant:



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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Ciudad Juarez, Mexico, and 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 who 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. [REDACTED], a citizen of the United States, is the wife of the applicant. 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). The OIC found the applicant failed to establish that he merits the grant of a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and denied the application, accordingly. On appeal, additional evidence is submitted in support of the waiver application.

The AAO will first address the director's finding that the applicant is inadmissible 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 more than one year.

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 Secretary, 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 Attorney General [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.

...

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). Exceptions and tolling for good cause are set forth in sections 212(a)(9)(B)(iii) and (iv) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii) and (iv), respectively. The periods of unlawful presence under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(II), are not counted in the aggregate. Each period of unlawful presence in the United States is counted separately for purposes of section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(II).¹ For purposes of section

¹ Memo, Virtue, Acting Assoc. Comm. INS, *Grounds of Inadmissibility, Unlawful Presence, June 17, 1997*; *INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043)*; and Cable, DOS, No. 98-State-060539 (April 4, 1998).

212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.² The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. DOS Cable, *supra*. See also *Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The record reflects that the applicant was unlawfully present in the United States for more than one year. The applicant entered the United States without inspection and resided in the country from March 1995 to March 2005, at which time he voluntarily departed from the United States. Thus, he accrued unlawful presence from April 1, 1997 until his voluntary departure from the country in March 2005, which triggered the ten-year bar. *Form I-601; Decision of the OIC, dated August 30, 2005*.

The OIC found the applicant did not merit a waiver of inadmissibility. In his decision, the OIC described the extreme hardship factors that must be present in order to waive inadmissibility for unlawful presence. The OIC concluded that the submitted letters from the applicant's wife reflected the normal problems associated with separation and did not rise to the level of "extreme hardship" as required by the Act. The OIC stated that the applicant's wife indicated that their child had an illness, but did not provide evidence of a continued serious illness. The OIC found that although separation and financial concerns cause hardship, the applicant provided no evidence that those hardships in his case are extreme. The OIC indicated that the applicant has additional unfavorable factors.

The AAO will now address the OIC's conclusion that a waiver of inadmissibility is not warranted in the present case.

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 and his children is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative here. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 564 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United

² DOS Cable, *supra*.; and IIRIRA Wire #26, HQIRT 50/5.12.

States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 564. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

The AAO will now apply the *Cervantes-Gonzalez* factors in its consideration of hardship to the applicant's wife. Extreme hardship to the applicant's wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In an affidavit signed on September 30, 2005, the applicant's wife makes the following statements. Since her husband has been gone she has become anemic. She went to a doctor's appointment about a month ago and was told that she is anemic because she does not take care of herself. She was told that her potassium is low and was prescribed iron pills. She is not able to take care of herself because she must work long hours to pay expenses: a car, truck, and household bills. She works from Monday to Friday from 6:30 A.M. to 3:13 P.M. every day, and 12 hours each day on Saturday and Sunday. She has been consistently working this schedule since her husband left in March 2005. She cannot continue to do this. Her 16-month-old son spends most of his days with his aunts and grandmother, and he has become more attached to them than to her. Her husband had a very bad accident in Mexico and was in critical condition. His mother went there to stay with him and now the main person who helped with her son is gone. She feels bad about asking favors of her husband's aunts because she pays them very little to care for her son. She cannot afford daycare. She does not want to raise her son without his father. She feels that her marriage will not work with her husband so far away; she has seen him twice since he left the country and can't afford to travel there. Her son does not recognize his father. She would like to take free computer classes offered by her company in order to get a better job there, but she cannot because she is always working. Her husband had a problem with a DWI and he tried marijuana and cocaine a long time ago. Her husband is a good person and she and her son need him.

In the letter signed by [REDACTED] February 23, 2005, [REDACTED] states that her son is eight months old and that when he turned three months of age he was hospitalized with whooping cough. She states that he has not fully recovered and cannot breathe well at times. She states that she has bills that need to be paid and that things will be difficult without her husband.

The record contains a letter from [REDACTED] father and mother. They state that their daughter's husband is a good person. He helped cut the yard, paid \$200 per month in rent, and bought food every week while he and their daughter lived with them. Now, their daughter helps with the phone bill.

The record contains letters in support of the waiver application from friends and relatives. It also contains medical records pertaining to [REDACTED] wage statements of [REDACTED] reflecting overtime; invoices; a bank statement; a purchase order for a vehicle; and other documents.

The AAO finds that the record is unclear in establishing that the applicant's wife is unable to meet monthly household expenses in the United States without her spouse's income. The applicant earns \$803 biweekly, excluding overtime. The submitted evidence is not persuasive in establishing that [REDACTED] is unable to meet monthly household expenses without her husband's income. The record reflects that she and her son live with her parents and that she does not pay rent to them. Although the record indicates that [REDACTED] has past due notices, this in itself does not establish that she lacks a sufficient stream of income in which to meet monthly household expenses. It is further noted that [REDACTED] has worked no more than 26.18 hours of overtime in a two-week period. *Wage statement for September 2, 2005*. This equates to a work week of 52.5 hours. Thus, counsel's statement that she works a "grueling 64 hour a week work schedule" is inaccurate. *Counsel's brief, submitted with October 1, 2005 letter*. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). Furthermore, U.S. courts have universally held that economic detriment alone is insufficient to establish extreme hardship. See, e.g., *INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that the applicant has a United States child is not sufficient in itself to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship)). The Ninth Circuit in *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 is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. It has taken into consideration [REDACTED] onset of anemia and low potassium. However, the AAO finds that [REDACTED] situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. The record before the AAO is insufficient to show that the emotional hardship to be endured by [REDACTED] upon separation from her husband if she and her son remain in the United States, is unusual or beyond that which is normally to be expected upon deportation.

The conditions of the country to which [REDACTED] will join her husband are a relevant hardship consideration. Counsel states that [REDACTED] has been in the United States all her life. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted). Even a significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986). Economic hardship claims of not finding employment in Mexico and not having proper medical care benefits do not reach the level of extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985). "Second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that hardship in finding employment in Mexico and in the loss of their group medical insurance did not reach "extreme hardship."

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" [REDACTED] claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang*, 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa*, 644 F.2d at 1356-57."

No evidence in the present record pertains to the availability of employment in Mexico. No evidence specifically relates to the applicant and his wife that establishes they will be completely unable to find any work or support their family. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, *supra*.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, is a hardship consideration. Although [REDACTED] indicates that her husband was in critical condition in Mexico, she has submitted no evidence of this as well as no evidence that he suffers from a significant health problem of which suitable medical care is unavailable in Mexico. [REDACTED] indicated that her young son had been hospitalized for whooping cough; however, the record contains no medical records of this. Furthermore, the record contains no evidence indicating that her son has significant health problems and that suitable medical care is unavailable in Mexico. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, *supra*.

The record reflects that [REDACTED] lives with her father and mother and would obviously sever this tie if she joined her husband. The BIA in *Matter of Shaughnessy*, 12 I & N Dec. 810, 813 (BIA 1968) stated that separation from family and financial difficulties do not constitute extreme hardship unless combined with more extreme impact.

Although hardship to the applicant's child is not a consideration under section 212(a)(9)(B)(v) of the Act, the hardship endured by the applicant's wife, as a result of her concern about the well-being of her children, is a relevant consideration. In *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), the Ninth Circuit stated that [t]he disadvantage of reduced educational opportunities for the children was also considered by the BIA and found insufficient to establish "extreme hardship." It also stated that "[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute "extreme hardship." In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit states that "[w]hile changing schools and the language of instruction will admittedly be difficult, Banks herself admitted that [REDACTED] would be able to learn the German language. The possibility of inconvenience to the citizen child is not itself sufficient to constitute extreme hardship under the statute." The record here indicates that [REDACTED] son is nearly three years of age and is still of pre-school age and thus less susceptible to the disruption of education and change of language involved in moving to Mexico.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.