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U.S. Citizenship
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AUG 28 2007

FILE:



OFFICE: CIUDAD JUAREZ, MEXICO

Date:

IN RE: 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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 is a native and citizen of Mexico who, pursuant to the record, admitted on March 14, 2005 to the interviewing officer at the American Consulate General in Ciudad Juarez, Mexico that he had entered the United States without inspection in 2001 and had remained until March 2005, when he voluntarily departed the United States. The applicant accrued unlawful presence in excess of one year. Thus, the officer in charge determined that the applicant was inadmissible under Section 212(a)(9)(B)(i)(II) of the Act, which provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(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 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...

Moreover, the officer in charge concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, September 26, 2005.

In support of the appeal, the following documents were provided: a statement from the applicant's spouse, a U.S. citizen, dated October 24, 2005; a Notice to Vacate for Non-Payment, issued to the applicant's spouse on October 5, 2005; and notices disconnecting the applicant's spouse's gas service and electricity. The entire record was reviewed and considered in rendering this decision.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to a section 212(a)(9)(B)(v) of the Act. These 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 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.

To begin, the applicant's spouse states that since her separation from the applicant due to his inadmissibility, "...we have lost our home and have been forced to move into an apartment. Our utilities were disconnected and I am presently having to walk as I do not have funds to repair my car." *Statement from [REDACTED] on the Form I-290B*, dated October 24, 2005. There is no documentation that establishes that the applicant plays an integral part in the applicant's spouse's financial well-being, such as letters from the applicant's employer confirming salary and/or tax documentation; such evidence would establish that the applicant's departure has had a direct link to the applicant's spouse's current financial situation. In addition, there is no documentation to establish why the applicant, once he returned to Mexico, was unable to obtain employment in order to assist the applicant's spouse with the costs of maintaining the U.S. household and caring for the two children.

While the applicant's spouse may need to make other financial arrangements with respect to her and her children's care, such as obtaining day care for her youngest child so that the applicant's spouse may get a job, it has not been established that any new arrangements for the psychological, emotional and financial care of the applicant's spouse and the children and the continued daily maintenance of the household would cause extreme hardship to the applicant's spouse. 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)).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her 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 based on the record. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The applicant's spouse also references her children, both U.S. citizens, and the fact that they need the applicant "...for financial and spiritual support." *Statement from [REDACTED]* at 2. Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent.

Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) of the Act does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant or their children cannot be considered, except as it may affect the applicant's spouse. No evidence has been provided that establishes that the children's welfare since the applicant departed the United States is directly causing extreme hardship to the applicant's spouse.

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. In this case, the applicant has not asserted any reasons why the applicant's spouse is unable to relocate to Mexico. As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to return to the United States for ten years, and moreover, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to accompany the applicant. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.