



U.S. Citizenship
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JUL 27 2007

FILE:

[REDACTED]
(CDJ 2002 788 294 relates)

Office: CIUDAD JUAREZ, MEXICO

Date:

IN RE:

PETITION: 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 PETITIONER:

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 (OIC), Ciudad Juarez, Mexico, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Mexico, was found inadmissible to the United States under 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. The applicant is the spouse of a United States citizen and 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), in order to return to the United States and rejoin her husband.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that her husband would suffer extreme hardship if she is required to remain in Mexico. 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:

(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.

The applicant and her husband, citizen of the United States by birth, resided together in Mexico City, Mexico from June 1998 until March 2002.¹ The applicant entered the United States, without inspection,

¹ See the Form I-130, Petition for Alien Relative.

on March 19, 2002.² Two days later, on March 21, 2002, the applicant and her husband were married. The applicant's husband signed the Form I-130 petition for alien relative that same day, and the petition was filed on April 9, 2002. The couple's daughter was born on June 1, 2002.

The applicant departed the United States in April 2005 and is now seeking readmission within ten years of her departure from the United States. She is, however, 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. The applicant does not contest the director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

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 available solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Extreme hardship to the applicant herself is not a permissible consideration under the statute. In the present case, the applicant's husband is the only qualifying relative, so hardship to the applicant or the couple's daughter may not be considered, except as it may affect the applicant's husband.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 alien 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. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

² *Id.*

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

On appeal, counsel contends that the OIC erred in denying the petition. Counsel states that separation from the applicant "has led to extreme hardship in the form of mental, financial[,] and emotional anguish" on the part of the applicant's husband. Counsel asserts that while the OIC was "quick to dismiss or overlook entirely the hardship experienced by" the couple's daughter, her suffering, which counsel describes as excessive, has a direct bearing on the applicant's husband's welfare. Counsel states that the applicant's husband works 72-74 hours per week in order to maintain his own household in Florida as well as that of his wife and daughter in Mexico, and that his low pay has caused him to sink deeply into debt. Counsel states that, as a citizen of the United States, the applicant's husband does not have a permit to work in Mexico, and that there are no realistic job possibilities for him in that country. Counsel also asserts that the applicant would not have remained in the United States unlawfully if had she known that doing so would jeopardize her application for permanent residency.

In his May 25, 2006 affidavit, the applicant's husband states that he has been working 72-74 hours per week in order to maintain two households; that he continues to go into debt due to the separation of his family; that, as a citizen of the United States, he does not have a work permit that would enable him to work in Mexico; that, even if he were able to secure employment in Mexico, he would not be able to make enough money to pay his debts; that he is emotionally crushed as a result of separation from the applicant; that the couple's daughter is now experiencing severe psychological and health problems; that the couple's daughter has lost weight and is becoming increasingly shy; that he is suffering from anxiety and depression as a result of his concern over his daughter's condition; that his doctor wants him to work fewer hours per week but is unable to do so as a result of his need to maintain two households; that he and the applicant believed they had properly petitioned for the applicant's visa; and that the applicant has never worked illegally in the United States.

The record also contains a letter from [REDACTED] dated May 23, 2006. In his letter, [REDACTED] states that the applicant's husband is suffering severe anxiety and depression, that he is unable to sleep, that he is hallucinating due to sleep deprivation, and that he is suffering from thoraco-lumbar back pain as a result of improper sleep and rest.

The record also contains two letters from friends of the applicant and her husband attesting to the good moral character of the couple.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450

U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In the instant case, the applicant is required to demonstrate that her husband would face extreme hardship in the event the applicant is required to remain in Mexico, regardless of whether he joins her in Mexico or remains in the United States. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

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 will face extreme hardship if the applicant is refused admission. The record does not demonstrate that he faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to his situation, the financial strain of visiting the applicant in Mexico, the stress associated with maintaining two separate households, and the emotional and financial hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. Nor has the applicant's husband established extreme hardship due to medical conditions. Other than [REDACTED] four-sentence letter, no evidence has been submitted to demonstrate that the applicant's husband faces stressors greater than that normally faced by persons in his situation. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter appears to be based upon a single visit between the applicant's husband and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or any history of treatment for the anxiety and depression suffered by the applicant's husband. Moreover, the conclusions reached in the submitted evaluation, which appear to be based upon a single visit, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship. As to his anxiety stemming from the state of his daughter's health in Mexico, the AAO notes that, as a United States citizen, the couple's daughter is not required to live in Mexico and is eligible to return to the United States immediately.³

Nor has the applicant established that her husband would face extreme hardship if he joined the applicant in Mexico, as the record fails to demonstrate that he would face hardship beyond that normally faced by others in his situation. While the applicant's husband states that as a United States citizen he does not have a work permit for employment in Mexico, he has not established that such a work permit is unavailable. Moreover, any claim of extreme hardship in the case of his returning to Mexico is undercut by the fact that he lived with the applicant in Mexico for nearly four years between 1998 and 2002. It is unclear how the couple was able to support itself during that time if the applicant's husband was not able to obtain employment. The applicant has not addressed this issue.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v.*

³ Moreover, none of the three documents submitted regarding the couple's daughter's health were accompanied by English translations. Accordingly, the evidence is not probative and be accorded no weight in this proceeding. See 8 C.F.R. § 103.2(b)(3).

INS, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The AAO finds that the OIC properly denied this waiver application. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that the applicant’s husband would suffer hardship beyond that normally expected upon the deportation of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that her United States citizen husband would suffer hardship that is unusual or beyond that normally expected upon removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. “Extreme hardship” has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. 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), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director’s denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.