

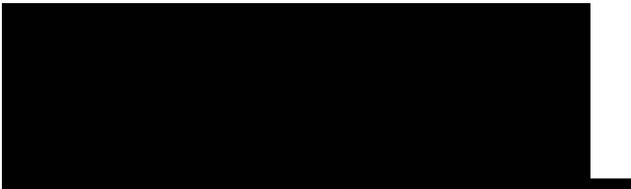


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FILE: [Redacted]  
CDJ 2004 722 619

Office: CIUDAD JUAREZ, MEXICO Date:

DEC 01 2008

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Ciudad Jaurez, Mexico and 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 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 and seeking readmission within ten years of her last departure from the United States. The applicant is the wife of a U.S. citizen and the mother of two U.S. citizen children, born in 2003 and 2005. She seeks a waiver of inadmissibility on the grounds of extreme hardship to a qualifying relative, under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her family.

The district director denied the application because he found that it failed to establish that the applicant's spouse would suffer hardship beyond that normally experienced as a result of the removal of a family member. *Decision of the District Director*, dated July 7, 2006.

On appeal, the applicant contends that the adverse financial and familial consequences caused by her absence from the United States constitute extreme hardship for her husband, [REDACTED], the qualifying relative, as well as for her two U.S. citizen children. Section 3 of the applicant's Form I-290B, Notice of Appeal to the Administrative Appeals Office, describes the reasons for the appeal as follows:

Please take into consideration the medical factors of my children . . . here in Mexico[:] because they are not Mexican citizens the medical costs are higher. My husband . . . works a rotating shift making it extremely difficult to travel to Mexico to care for us. Although he is doing his best, it is hard for him regardless. Not only are we separated by miles or [sic] long distance, but our American dream is being shattered. I cannot adequately fulfill the medical needs of our children here in Mexico. Thank you for your time.

Section 301(b) of the Illegal Immigration and Immigrant Responsibility Act of 1996 Pub.L. 104-208, amended section 212(a) of the Act to render inadmissible any alien who departs the United States after accruing unlawful presence. The unlawful presence provisions of the Act became effective as of April 1, 1997. As defined in section 212(a)(9)(B)(i) of the Act, an alien is deemed to be unlawfully present in the United States if:

The alien is present in the United States after the expiration of the period of stay authorized by the Attorney General [now Secretary of Homeland Security] or is present in the United States without being admitted or paroled.

The record reflects that the applicant resided in the United States from her entry without inspection in 2000 until her return to Mexico in October 2005. Therefore, the applicant accrued unlawful presence from the date she entered the United States until the date she departed. On November 3, 2005, the applicant applied for an immigrant visa at the American Consulate General in Juarez, Mexico. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States.

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.

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 lawful permanent resident spouse and/or parent of the applicant. Hardship that the applicant or other family members experience as a result of separation is not considered in section 212(a)(9)(B)(v) waiver proceedings, except to the extent that it causes hardship to the applicant's spouse and/or parent. In the present case, the applicant's only qualifying relative is [REDACTED]

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 has held:

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)].

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.

It should be noted that, to demonstrate extreme hardship in the present case, the applicant must establish that her husband would suffer extreme hardship whether he relocates to Mexico to reside with her or remains in the United States without her. This is because [REDACTED] is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of this proceeding includes the following documentation submitted to support the assertion of extreme hardship: (1) a March 13, 2006 four-page physician's report of a "full physical and history evaluation" of Mr. [REDACTED] at the Lincoln Health Center in Milwaukee, Wisconsin; (2) a letter, dated March 21, 2006, from Mr. [REDACTED] to the American Consulate General, Ciudad Juarez, Chihuahua, Mexico that asserts the adverse effects of the bar against his wife's admission; (3) a March 18, 2006 letter from the pastor of Saint Hyacinth Church in Milwaukee, Wisconsin; and (4) a handwritten statement in Spanish, submitted without translation. The entire record has been reviewed and considered in reaching a decision in the applicant's appeal.<sup>1</sup>

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to [REDACTED] in the event that he leaves the United States in order to reside with her in Mexico. However, the present application and supporting submissions do not address how [REDACTED] relocating to Mexico would result in extreme hardship to him. Accordingly, the AAO is unable to find that the applicant has established that extreme hardship would befall [REDACTED] if he joined the applicant in Mexico.

The second part of the extreme hardship analysis requires the applicant to establish that [REDACTED] would suffer extreme hardship if he remains in the United States.

The March 13, 2006 physician's report indicates that [REDACTED] is experiencing "an acute onset of health problems [such] as nightmares, insomnia, lack of appetite, changes in his mood and withdrawal from friends and family members that are the symptoms consistent [with] early depressive disorder" that "could be triggered" by great stress. The report indicates that its author is a medical doctor who is neither a psychologist nor a psychiatrist, and that his assessment is preliminary and subject to the results of further testing and consultation with mental health professionals. The report also specified a treatment plan that included referral for

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<sup>1</sup> The Spanish language statement was not considered by the AAO because it is not accompanied by a certified translation. The regulation at 8 C.F.R. § 103.2(b)(3) states that any submitted document containing foreign language "shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

psychological counseling, prescription of an anti-depressant medication, and a “follow-up in two weeks in the office with full laboratory evaluation examination.”

While the AAO notes the information in the physician’s report, it also observes that the report is based upon a single physical examination and patient history review; and is preliminary in nature, to be followed by a second appointment in two weeks, a full laboratory examination, and referral to a psychologist or psychiatrist for additional evaluation and counseling. However, no documentation of laboratory tests or follow-on medical and psychological/psychiatric consultations has been submitted. The AAO also notes that the “Past social and medical history” section of the report is erroneous, in that it refers to a person other than [REDACTED] namely, a divorced man over 62 years of age who was living with his son. *See Physician’s Report, at page 2.*

In that the evaluation of the emotional hardship suffered by [REDACTED] as a result of his separation from the applicant is based on a physical medical examination and is preliminary in nature, it, alone, is insufficient to establish that he would suffer extreme emotional hardship if the applicant’s waiver application were to be denied. The record, as previously noted, offers no evidence of the results of the additional medical tests that were to be performed on [REDACTED] or of any psychological evaluation of [REDACTED] conducted by a mental health professional that would support the preliminary evaluation provided by his physician. Moreover, the error in the reporting of [REDACTED] social and medical history argues against assigning great evidentiary weight to the report’s conclusions.

The pastor of Saint Hyacinth Church, writing in March 2006, attests that [REDACTED] had been “an active member” of the parish since August, 2001; that [REDACTED] wife and children are together in Mexico, awaiting the outcome of the waiver application; and that the “separation is proving to be a hardship for the entire family: [Mr. [REDACTED], his wife and children.” The AAO notes that the pastor does not provide any details about the hardship referenced in his letter. Also, he does not describe the extent of his personal knowledge of the effects of the applicant’s absence. The pastor also attests that [REDACTED]’s rotating shifts render him “unable to take care of the children here.” The pastor also states that the Moran children’s check-ups and vaccinations cost more in Mexico because the children are not Mexican citizens and that the children would receive such medical care through their father’s health insurance if they were in the United States. While the AAO finds the issues raised in the letter from [REDACTED]’s pastor to be relevant to this proceeding, his claims carry little evidentiary weight as they are not supported by documentary evidence in the record. 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)).

In his March 21, 2006 letter to the American Consulate General, [REDACTED] asserts that his separation from the applicant is causing him “insomnia, depression, sadness, and anxiety,” and references the medical evaluation prepared by his physician on March 13, 2006. He also contends that his children are ill and “suffering through infections without health insurance in Mexico” for which he must pay all costs. He further asserts that, because of his rotating-shift schedule at work, he needs the applicant to care for their home and children, noting that it would be a “severe economic blow” to the whole family if he were to stop working. [REDACTED] also contends that, without the applicant, he would be unable “to offer our normal support and involvement” to his parish church. As specific “personal matters,” [REDACTED] states:

Imagine what it would be like to be alone in my home, and what it must be like for my sons to be far separated from me without any creature comforts. This has caused a terrible suffering and pain in all of the family.

While the AAO acknowledges [REDACTED] sadness and anxiety resulting from his separation from the applicant and his children, it, as previously discussed, does not find that the medical report prepared by his physician establishes that he is experiencing extreme emotional hardship. The AAO also notes [REDACTED] claims regarding his children's health and the cost of their medical treatment in Mexico. However, the record fails to document the nature of the children's illnesses or the costs associated with their treatment. Moreover, as previously noted, the applicant's children are not qualifying relatives for the purposes of a section 212(a)(9)(B)(v) proceeding and the record does not document how their health problems are affecting [REDACTED] the qualifying relative. [REDACTED] claim that his rotating-shift work schedule would make it impossible to care for his children in his wife's absence is also unsupported by the record, which fails to include documentation that establishes the type of work he performs or his work hours. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*.

The AAO has considered, both individually and in the aggregate, all of the hardship factors identified in the present application. The record, however, when reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant's waiver application were denied. Rather, the record demonstrates that [REDACTED] would experience the distress and upheaval routinely created by the enforced absence of a spouse due to her inadmissibility. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. Accordingly, the applicant has not established that [REDACTED] would suffer extreme hardship if he remains in the United States while she lives outside the United States as a consequence of her inadmissibility.

As the evidence has not established that [REDACTED] would face extreme hardship if the waiver request were denied, the applicant has failed to establish statutory eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. As the applicant is 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 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.