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U.S. Citizenship  
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FILE: 

Office: ST. PAUL, MN

Date:

**DEC 18 2008**

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:



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).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, St. Paul, Minnesota, 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. The record reflects that on March 15, 2006, the applicant gave sworn testimony to the interviewing officer admitting that he had initially entered the United States in October 1997 using a valid Border Crossing Card and had remained beyond the period of authorized stay. He did not depart the United States until 2000. The applicant accrued unlawful presence from 1997 until September 2000, when he departed the United States. The applicant was thus 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. The applicant seeks a waiver of inadmissibility in order to remain with his U.S. citizen spouse in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 25, 2006.

In support of the appeal, counsel for the applicant submitted a brief, dated June 15, 2006 and referenced attachments. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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 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. 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.

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 his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or their U.S. citizen child, born in April 2004, cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse first contends that she will suffer extreme emotional hardship if the applicant's waiver request is not granted. As stated by the applicant's spouse,

[M]y father and mother decided to separate in 2004 after 30 years of marriage and that I tell you has been one of the worst things I have had to cope with.... To see her sick, depressed and with not much will to fight and move on makes it harder for her children. Thank God for my husband [the applicant], because he has been a huge help in me coping with this matter. Without him I think I would of sunk in with my mother instead of helping her get through it. He helped me with my mother.... He also helped me find the courage to get my mom through this by praying for me and sitting down and counseling me through this....

██████████ [the applicant] is the backbone of our family. He is really caring and supportive in anything we do as a family.... ██████████ is the kindest person I know with a huge heart and the best dad to his son.... I would never want to even think of having to separate ██████████ from his son or wife. My everyday life would be affected and I would not be able to support my son on my own....

Further on, in 2003 ██████████ help me get through another really horrific time in my life. My brothers ██████████ and ██████████ were both on their way to a volleyball tournament in Houston, Texas when they were struck by another vehicle killing my brother ██████████ and critically injuring my brother ██████████.. ██████████ was really strong through this hard time for me and was my backbone. Who knows where I would have been without him there by my side.... To lose my husband on top of all this would definitely kill me. I have had to deal with all these hardships that I cannot bear one more....

Letter from ██████████, dated June 14, 2006.

No documentation from a mental health professional has been provided to establish that the applicant's spouse will suffer extreme emotional hardship were the applicant removed from the United States. In addition, the record indicates that the applicant's spouse has been gainfully employed, working two jobs; the applicant's immigration situation does not appear to have impeded the applicant's spouse's ability to work and maintain the household. Moreover, the record indicates that the applicant's spouse has a vast support network in the United States, including her mother, father, and numerous siblings; it has not been established that they would be unable to assist the applicant's spouse should the need arise, whether with her own care or with the care of her child. Finally, the applicant has failed to document that the applicant's spouse would be unable to visit the applicant on a regular basis. 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 depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of 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 current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship

involved in such cases. U.S. 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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).

Counsel further asserts that the applicant’s U.S. citizen spouse will suffer extreme financial hardship due to the applicant’s relocation abroad based on his inadmissibility. As stated by counsel,

[redacted] [the applicant] has few ties in Mexico, and no financial ties, no home, no employment. He has not lived there in almost nine years....

It would also be very hard and stress for [redacted] [the applicant’s spouse] remaining alone in the United States as she would have to be supporting not only her home in the United States, but also sending money for living and medical expenses for her husband in Mexico. With her husband’s departure, the added expense of day care for [redacted] [the applicant’s child].

*Brief in Support of Appeal*, dated June 15, 2006.

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 (9<sup>th</sup> Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”).

No evidence has been provided to objectively substantiate counsel’s assertions that the applicant is unable to obtain gainful employment in Mexico, thereby providing him with the ability to support himself while he resides in Mexico. Although counsel has provided information about country conditions in Mexico, the AAO notes that said documentation is general in nature, and does not specifically establish that the applicant will be unable to obtain gainful employment abroad.

Moreover, the record indicates that the applicant’s spouse earned over \$30,000 per year in 2006, which is well over the 2008 poverty guidelines. *See Letter from [redacted] Accounting Manager, Top Temporary*, dated March 9, 2006. It has thus not been established that this type of income, without any additional financial support from her husband, would cause the applicant’s spouse extreme financial hardship. Finally, as previously noted, the applicant’s spouse has a vast support network, including her parents and numerous siblings; it has not been established that they are unable to assist the applicant’s spouse with respect to her finances and the daily care of her child,

should she find herself in a financial predicament due to the applicant's inadmissibility. While the applicant's spouse may need to make adjustments with respect to her financial situation and the daily care of her child while the applicant resides abroad due to his inadmissibility, it has not been shown that such adjustments would cause the applicant's spouse extreme hardship.

The AAO recognizes that the applicant's U.S. citizen 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 removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not established that the applicant's U.S. citizen spouse will suffer extreme emotional, psychological and/or financial hardship due to the applicant's absence.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse states as follows:

[REDACTED] the applicant]...comes from a family of four.... His parents are Pastors.... They live in a house that I would consider barely livable. In the winter the house is really cold and need space heaters to warm up the house, because they cannot afford to put in a central unit. And in the summer the hot is unbearable because they can [sic] afford air conditions [sic]. The house is not big enough for everyone that lives there much less another family. They can't afford to pay their house expenses in which sometimes we have to help them with....

The violence and drug trafficking is really dangerous there. There is not a day that goes by when we watch the news for Mexico and there is always deaths and violence that occurs in the streets as if it is normal.... With this said I would never take my son or family anywhere they would not be safe first off, and where there is no justice or peace....

I would never be able to leave my family behind....

Next, as we all know health insurance is so important to raising a healthy child, and I don't even know how that works in Mexico... Lastly, I would want my son to have a good education and the same opportunities as the rest of the Citizens of the United States....

[E]ven though I speak Spanish my degree would not translate to Mexico....

No corroborating evidence has been provided to establish that the applicant's spouse and/or the applicant would be unable to obtain gainful employment with adequate medical care coverage in Mexico. As previously stated, general information about country conditions does not suffice to establish extreme hardship to the applicant's spouse specifically. Moreover, although the applicant's spouse contends that her child's educational development would suffer greatly if the family were to relocate to Mexico, no corroborating evidence has been provided to document that the applicant's child's education would worsen in Mexico to an extent that would cause extreme hardship to the applicant. Finally, it has not been established that the applicant's spouse would be unable to return to the United States on a regular basis to visit with her family and/or that they would be unable to visit her in 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 remain in the United States, and moreover, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to accompany the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. 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. The waiver application is denied.