

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H3



FILE: [redacted] Office: CIUDAD JUAREZ, MEXICO Date: FEB 28 2008

(CDJ 2004 718 931 relates)

IN RE: Applicant: [redacted]

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. The applicant is married to [REDACTED] who is a naturalized citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which the Officer-in-Charge denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the Officer-in-Charge, dated November 24, 2005.* The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility.

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

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). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.¹ For purposes of section 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. *See* DOS Cable, note 1. *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 entered the United States in 1994 and voluntarily departed from the country in 2005. Section 212(a)(9)(iii) of the Act provides that certain periods of presence in the United States are not considered unlawful. The exemption includes time spent in the United States while the alien is under the age of 18. The record shows the applicant was born on August 13, 1983. For purposes of

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).

² *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

calculating unlawful presence under section 212(a)(9)(B) of the Act, the time the applicant spent while under the age of 18 would not be considered unlawful. She therefore began to accrue time in unlawful presence on when she turned 18 years old on August 13, 2001. The applicant married on March 9, 2002 and her husband filed the Petition for Alien Relative on her behalf on April 5, 2002 and it was approved on July 12, 2004. When the applicant voluntarily departed from the country in 2005, she triggered the ten-year-bar, having accrued unlawful presence from August 13, 2001 until her departure from the country. Consequently, the Officer-in-Charge was correct in finding her inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

Section 212(a)(9)(B) of the Act provides that:

- (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.

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 is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in this case is the applicant’s husband. 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).

The record contains letters, birth and marriage certificates, and other documents.

On appeal, counsel states that [REDACTED] has a strong bond with his wife and daughter, born in 2002, and that they anticipate another child in 2006. She states that although the applicant speaks Spanish, she is not culturally connected to Mexico because she left there at the age of eight. Counsel states that separating the applicant and her child from her husband would create an emotional, physical, and financial plight for the family. She states that the applicant’s husband depends on the applicant to support the household and be a mother and wife. Counsel indicates that [REDACTED] has lived in the United States since the age of 12, and has completed two years of college and has employment here. She states that his parents live with him and his wife and child. She states that the applicant has no family in Mexico and completed two years of high school here. Counsel states that [REDACTED] has never worked in Mexico, its job market is not encouraging, and loss of income while in Mexico would cause the loss of their home and credit in the United States. She states that [REDACTED] cannot financially support his wife if she is delayed while in Mexico with his parents and child. Counsel states that [REDACTED] is concerned about the healthcare his pregnant wife and elderly parents would receive in Mexico. She states that [REDACTED] worries about the stress that separation will have on the unborn child.

The content of the letter dated December 14, 2005 from the applicant's husband is similar to that of counsel's brief. In addition, [REDACTED] states that his wife and child are being taken care of his parents who are in Mexico for that reason. He states that his father's pension is nearly \$80.00 each month and his 62-year-old mother does not qualify for a pension. He states that both of his parents live with him because they are old and do not have enough money to survive. He states that he and his wife are afraid that he may lose his job on account of traveling back and forth to Mexico.

The record contains letters commending the character of the applicant and her husband. The letters indicate that the [REDACTED] family needs to be together.

The letters from [REDACTED]'s employer convey that he has been working with the company since 1999 and is a valued employee. One letter conveys that he assists the bartender.

The December 21, 2005 letter from a family friend indicates that family separation is causing [REDACTED] to have a difficult time focusing on his job.

The December 31, 2005 evaluation by [REDACTED] MSW, LCSW, conveys that [REDACTED] would suffer undue hardship if his family were not allowed to return to the United States. She states that [REDACTED] has suffered emotionally and financially from the separation. She states that he has severe depression and anxiety, stressed over the possibility that his wife, daughter, and unborn child may not be able to return to the United States. She states that [REDACTED] lacks the appropriate coping skills for the situation and a longer separation would only escalate his depression. She states that [REDACTED] condition can be controlled by reunification with his family and ongoing therapy and psychotropic medication. She states that further separation may cause [REDACTED] to be a threat to himself or others and that he may have increased anxiety, posttraumatic stress disorder, and depression.

The January 13, 2006 evaluation by [REDACTED] states that she has been treating [REDACTED] for depression and anxiety via individual psychotherapy to alleviate depressive symptoms. She states that [REDACTED] complains of insomnia, lack of appetite, and impaired functioning at work, which indicate that he is depressed. She states that he has the financial hardship of maintaining two households and the expense of traveling to Mexico. She states that [REDACTED]'s depressive symptoms may increase, causing her to have a grave concern for his emotional state. She recommends that [REDACTED] continue individual therapy to address separation issues and depression. She states that a referral for a psychiatric consult is not warranted yet, and recommends family therapy once the family is united.

The AAO has carefully considered all of the submitted evidence in rendering this decision.

"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, 565 (BIA 1999). The 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 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 565-566. 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).

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant's husband must be established in the event that he joins the applicant, and in the alternative, that he 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.

The record establishes that the applicant's husband would experience extreme hardship if he were to remain in the United States without his wife.

The evaluations by [REDACTED] convey that [REDACTED] has severe depression and anxiety caused by the possibility that his wife, daughter, and unborn child may not be able to return to the United States, and that to alleviate his depressive symptoms he has been attending individual psychotherapy sessions. The record indicates that [REDACTED]'s parents are living with his wife and child in Mexico in order to care for them. The AAO finds that in the context of [REDACTED]'s situation, his separation from his pregnant wife and child as a result of removal would rise to the level of extreme hardship as defined by the Act. The record before the AAO is sufficient to show that the emotional hardship experienced by the applicant's husband is unusual or beyond that which is normally to be expected upon removal.

However, the record is not sufficient to establish that the applicant's husband would experience extreme hardship if he were to join her to live in Mexico.

The conditions in Mexico, the country where [REDACTED] would join his wife, are a relevant hardship consideration. 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).

[REDACTED] claim of hardship stemming from inability to find work in Mexico is not supported by documentation. 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, as stated in *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985), the claim of not finding employment in Mexico does not reach the level of extreme hardship. And 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 did not reach "extreme hardship."

z states that he would experience extreme hardship living in Mexico because he has lived in the United States since he was 12 years old, has no family in Mexico, and financially supports his father and mother who live with him in the United States. The AAO finds that the record contains no evidence that Mr. z's parents are U.S. citizens or lawful permanent residents and that they live with him and rely upon him financially. 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)).

z states that he is concerned about healthcare in Mexico. In *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984), the BIA found that "second class" medical facilities in foreign countries are not per se extreme hardship.

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 section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

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)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), 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.