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U.S. Citizenship
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Services

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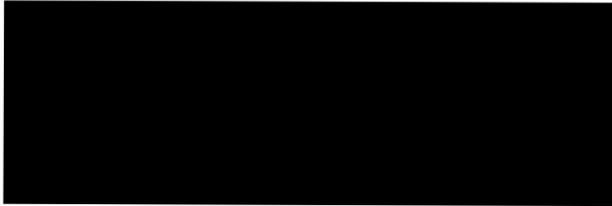


FILE: [REDACTED] 6 Office: ST. PAUL, MN Date: SEP 22 2008

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, St. Paul, Minnesota, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 40-year-old native and citizen of Mexico who was found inadmissible to the United States. The record reflects that the applicant is the spouse of a U.S. citizen and father of two U.S. citizen children. He is the beneficiary of an approved relative petition filed on his behalf by his spouse. The applicant was removed from the United States in 1992.¹ He seeks a waiver of inadmissibility in order to return to the United States.

The District Director determined that the applicant was inadmissible to the United States pursuant to sections 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B). The director further found that the applicant failed to establish extreme hardship to his U.S. citizen spouse, and denied his waiver application accordingly.

On appeal, the applicant contends that his spouse would face extreme hardship if he the waiver was denied. Specifically, the applicant notes his children's medical conditions (such as asthma, allergies and throat infections), his trucking business and his lack of employment prospects in Mexico. See Applicant's Appeal Brief, and exhibits cited therein.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), 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 district director found the applicant inadmissible on the basis of his unlawful presence in the United States. The record reflects, and the applicant admits, that he was unlawfully present in the United States for a

¹ The applicant has concurrently filed an appeal of the denial of his Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

period of more than one year. His departure from the United States triggered the 10-year bar to admission. Accordingly, the AAO finds that the applicant is inadmissible as charged. The question remains whether he is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v).

A section 212(a)(9)(B)(v) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself is not a permissible consideration under the statute. Hardship to an applicant's children is also not a relevant consideration.

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 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).

The applicant's spouse, [REDACTED] is a 39-year-old native of Colombia who became a U.S. citizen upon her naturalization in 1999. She has been married to the applicant since 1994. The couple has two teenage children, both of whom were born in the United States. The children have been treated for medical conditions such as asthma, allergies, sore throats, enlarged adenoids, obstructed breathing and sleep apnea. The children do not read or write Spanish, and are well-adjusted to their community in Minnesota. The family is financially dependent on the applicant.

The record contains evidence relating to the economic, political and social conditions in Mexico. The AAO notes that, as U.S. citizens, the applicant's family is not required to relocate to Mexico and doing so would be a matter of family choice. The AAO notes that hardship to the applicant's children, in any event, is only relevant as it results in hardship to his spouse. The hardship claimed by the applicant if the family were to relocate to Mexico relates to the children's reduced educational opportunities and difficulties transitioning, and to financial difficulties. The AAO notes that the record does not suggest that the applicant's children's medical conditions are severe or unusual, or that treatment for their conditions is unavailable in Mexico. Lower standard of living, decreased educational or employment opportunities do not amount to "extreme

hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (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”). The record does not contain evidence relating to the applicant’s extended family ties, either in Mexico or the United States.

While the AAO has carefully considered the impact of separation resulting from the applicant’s inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. See *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that “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”). In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant’s spouse due to the potential separation from the applicant rises to the level of extreme.

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 spouse would face extreme hardship if the applicant is denied the waiver. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of “extreme hardship,” Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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 (9th Cir. 1991); *Perez v. 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). 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 therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Having found the applicant statutorily ineligible for a waiver, the AAO need not address whether the granting of the waiver is warranted in the exercise of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212 of the Act, the burden of proving eligibility rests 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.