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U.S. Citizenship
and Immigration
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FILE:

(CDJ 2004 634 299)

Office: CIUDAD JUAREZ, MEXICO Date: APR 01 2009

IN RE:

APPLICATION: 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. section 1182(a)(9)(B)

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, 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 Officer in Charge, Ciudad Juarez, Mexico. 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. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen. She 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).

The Officer in Charge concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 22, 2006.

On appeal, the applicant states that her husband is suffering financially and emotionally due to her absence, and that he needs her to prepare meals which suit his medical condition.

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

(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 [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 record establishes that the applicant entered the United States without inspection in February 2002 and remained until she departed voluntarily in April 2005. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 or other family members is not directly relevant in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a 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 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 applicant 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.

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. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). As this case arises within the jurisdiction of the 9th Circuit Court of Appeals, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she accompanies the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant’s waiver request.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; pictures of the applicant, her husband and their daughter; a letter from the applicant's spouse's employer, tax records and pay stubs for the applicant's spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, counsel states that the applicant's spouse has not lived in Mexico for more than 35 years, that he has few relatives in Mexico, that his family ties are in the United States and that he relies on his family members in the United States for emotional and psychological support. Counsel also contends that the applicant's spouse's health would be at risk in Mexico since he has been diagnosed with gout and gastro esophageal reflux disease and has high cholesterol that must be closely monitored. Counsel asserts that as a result of a lack of potential resources in Mexico, the applicant's spouse will not be able to receive the same or adequate health care upon relocation. Counsel also contends that relocation to Mexico will mean extreme hardship for the applicant's spouse as it is plagued with a high poverty rate, high crime and discrimination against those with disabilities. Further, counsel states, Mexico's high unemployment rate will preclude the applicant's spouse from obtaining employment to support his family.

While the AAO notes that the record documents the spouse's medical conditions, it finds no evidence to support counsel's claim that they could not be adequately treated in Mexico. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record also contains the section on Mexico from the Department of State's Country Reports on Human Rights Practices – 2004. However, the AAO does not find its generalized discussion of conditions in Mexico to support the claim that the applicant's spouse would be unable to obtain employment in Mexico or that he would and his family would live in poverty or be subjected to crime. Further, while the AAO notes counsel's claim that the applicant's spouse would be faced with discrimination against those with disabilities, it does not find the record to establish that the applicant's spouse has a disability that would subject him to such discrimination.

If the applicant's spouse were to remain in the United States without the applicant, counsel asserts that his health would suffer as he requires the applicant's assistance with his diet and to ensure he takes his medication. Counsel states that the applicant's physical well-being is dependent on the applicant. In an April 17, 2006 declaration, the applicant's spouse states that he is not well, is taking a lot of medication and is on a special diet that the applicant has learned to cook for him. He contends that he is afraid that, without her to help him, he will get sick and possibly die. He also asserts that because of his gout there are many days he is unable to get out of bed and he must rely on the applicant to help him with the basic necessities. Further, in a November 14, 2005 letter, the applicant's spouse indicates that he is unable to provide for the applicant's and their daughter's health care needs in Mexico because of the financial difficulties created by his trips to Mexico to visit the applicant and a reduction in his paycheck at work as a result of loan repayments. He also states that

he has not been functioning well at work because of his depression over his separation from his family.

The record, as previously noted, establishes that the applicant's spouse has been diagnosed with gout, gastro esophageal reflux disease and high cholesterol for which he takes medication. However, it does not address or document the impact of these conditions on his ability to perform daily activities, including the extent to which he requires support from the applicant. Neither does it provide sufficient documentary evidence to establish that he is experiencing financial difficulties, e.g., proof of his reduced paycheck or the personal loans he indicates he is paying, or that he is experiencing depression that has affected his work, e.g., an evaluation from a licensed health care professional. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

The record, when viewed 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 refused admission. While the AAO recognizes that the applicant's spouse would face hardships if the applicant's waiver application is denied, the record does not distinguish these hardships from those experienced by other individuals whose spouses have been excluded from the United States. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant 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 rests 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.