

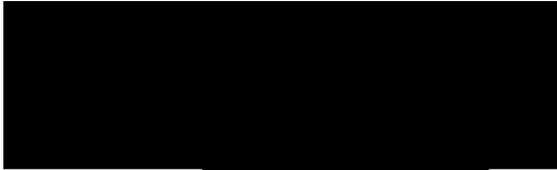
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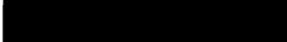


U.S. Citizenship
and Immigration
Services

H3



FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date: **APR 13 2009**

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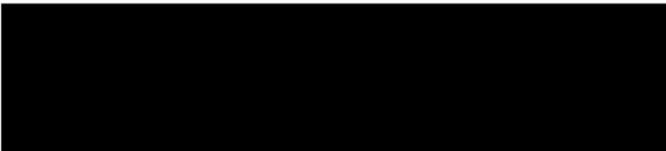
IN RE:



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 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, Mexico City, 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 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 10 years of her last departure from the United States. The applicant is married to a naturalized citizen of the United States and is the daughter of two legal permanent resident parents. She seeks a waiver of inadmissibility in order to reside in the United States with her husband and children.

The District Director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her United States citizen spouse and Legal Permanent Resident parents. The application was denied accordingly. *Decision of the District Director*, dated June 5, 2006.

On appeal, counsel asserts that the separation of the applicant from her qualifying family members, in this case her spouse and both of her parents, causes them extreme emotional hardship. Counsel further asserts that the economic situation and violence in general and violence toward women and girls in particular in Mexico would cause relocation to Mexico to be an extreme hardship to the applicant's qualifying family members. Counsel states that the OIC did not accord due weight to the hardships experienced by the separation of the applicant's children from the applicant, as those hardships impact her qualifying family members. Counsel also asserts that the OIC failed to consider country conditions information in his decision. *Brief from counsel*, undated.

In support of these assertions, counsel submits a brief as well as: an affidavit of the applicant's spouse, dated July 28, 2006; letters of support from the principal of the applicant's school and from the deacon of her church, country conditions information from the Department of State, Wikipedia, and the World Bank; and visa information from United States Citizenship and Immigration Services (USCIS) and the Department of State. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

In the present application, the record indicates that the applicant entered the United States without inspection in February of 1999 and that she resided in the United States since that time and until July 2005, when she voluntarily departed.

The applicant's spouse states that while the applicant entered the United States without inspection in 1999, she did so because there were 6-year backlogs for adjudication of immediate relative petitions from Mexico at that time and they could not bear to be separated for that period of time. *Affidavit of* [REDACTED] dated July 28, 2006. Counsel further provides a visa bulletin from the United States Department of State Bureau of Consular Affairs from March 1999 as proof of this backlog.

The AAO notes that the applicant was unlawfully present in the United States for a period of more than one year and is currently applying for admission to the United States within 10 years of her July 2005 departure date. Therefore, she is inadmissible pursuant to Act § 212(a)(9)(B)(i)(II).

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 lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

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).

Counsel asserts that the applicant's United States citizen spouse and both of her Legal Permanent Resident parents would face extreme hardship if they relocated to Mexico in order to reside with the applicant. Counsel states that hardships they would face include: the lack of family ties in Mexico; country conditions in Mexico; and financial hardships that the applicant's spouse would endure if he relocated to Mexico.

Counsel indicates that the lack of family ties in Mexico would contribute to hardship experienced by the applicant's qualifying family members if they were to relocate there. Counsel states that neither the applicant's spouse nor her parents have any immediate relatives outside of the United States. *Brief from counsel*, undated. The applicant's parents have four daughters and two sons, all of whom are United States citizens or Legal Permanent Residents in the United States. *Attachment to 601 detailing relatives of the applicant in the United States*, undated. The applicant's spouse who entered the United States legally as a permanent resident in 1997 and became a United States citizen in 2003, states that his entire family, including his mother, his father and his three siblings reside in the United States. *Affidavit of [REDACTED]* dated July 28, 2006. Counsel further states that the applicant's spouse's mother, father, and three siblings are Lawful Permanent Residents, that his son is a United States Citizen and that his daughter is a Legal Permanent Resident. *Brief from counsel*, undated.

The principal of the applicant's daughter's school states that the applicant's separation from her daughter causes the applicant extreme hardship and she also asserts that the applicant's immediate family is located in the United States. *Letter from [REDACTED] Principal of Bluebonnet Elementary*, undated. Though hardship to the applicant and hardships experienced by her daughter can only be considered to the extent that they impact qualifying family members, this letter offers further proof that the applicant's immediate family members, who are also her parent's immediate family members, reside in the United States.

Counsel further emphasizes that country conditions in Mexico are such that relocating there would cause the applicant's qualifying family members to experience hardship. Counsel states that the director did not consider these conditions when he made his decision. Counsel refers to the 2005 report on Mexico by the Department of State's Bureau of Democracy, Human Rights and Labor,

when he states that 350 women and girls have been killed over the past 12 years in Ciudad Juarez, 34 of whom were killed in 2005. Counsel further states that 1,200 individuals were killed as the result of drug-related violence in 2005 and that almost 50% of women over 15 years of age report suffering at least one incident of physical, emotional or sexual aggression. *United States Department of State, Country Reports on Human Rights Practices – 2005: Mexico*, Released by the Bureau of Democracy, Human Rights and Labor on March 8, 2006; *Brief from Counsel*, undated. Counsel states that the applicant's parents are aware that Mexico is unsafe this is why they are currently residing in the United States. *Brief from counsel*, undated.

Country conditions information in the record is now more than three years old. Upon examination of more current country conditions information from the sources previously provided by counsel, the AAO found that the 2008 country report on human rights practices in Mexico¹ states, that the following human rights problems were reported in Mexico in 2008: unlawful killings by security forces; kidnappings; physical abuse; poor and overcrowded prison conditions; arbitrary arrests and detention; corruption, inefficiency, and lack of transparency in the judicial system; confessions coerced through torture; criminal intimidation of journalists leading to self-censorship; impunity and corruption at all levels of government; domestic violence against women, often perpetrated with impunity; violence, including killings, against women; trafficking in persons, sometimes allegedly with official involvement; social and economic discrimination against some members of the indigenous population; and child labor.

The 2008 report² also states that according to a 2006 National Survey on Household Relationships, 67 percent of women over age 15 had suffered some abusive treatment. According to the NGO National Citizen Femicide Observatory, more than 1,014 girls, teenagers, and women were killed in the 19 months ending July 31, 43 percent of whom were between the ages of 21 and 40. Additionally, there were 432 killings and disappearances of women recorded in Ciudad Juarez, Chihuahua, between 1993 and May 2008, with at least 30 killings of women during the year.

Additionally, the Department of State issued a travel warning for Mexico on February 20, 2009 which highlights crime and violence in Mexico and urges United States Citizens to use caution when traveling in that country.³

Counsel also states that the economic situation in Mexico is such that the applicant's spouse would experience financial hardship if he were to relocate there. *Brief from Counsel*, undated. Counsel refers to a World Bank report⁴ when he states that extreme poverty is at nearly 28% in rural areas, such of Rancho El Cerro, which is where the applicant's spouse resides. *Id.*

¹ United States Department of State, Bureau of Democracy, Human Rights and Labor. 2008 Human Rights Report: Mexico. Issued February 25, 2009. Found at: <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119166.htm> Accessed March 19, 2009.

² *Id.*

³ Found on http://travel.state.gov/travel/cis_pa_tw/pa/pa_3028.html Accessed March 4, 2009.

⁴ World Bank. Mexico: Income Generation and Social Protection for the Poor. August 24, 2005.

The applicant's spouse has been employed for a school district in the United States since 1998. Because of his tenure there, he now earns \$13.48 per hour. However, both the applicant's spouse and counsel contend that he would earn approximately \$10.00 per day in Mexico if he were to work in the fields. *Brief from counsel*, undated; *Affidavit of* _____ dated July 28, 2006. The applicant's spouse states that this discrepancy in wages earned would contribute to hardships he would experience if he were to relocate to Mexico. *Id.*

Counsel has stated that the applicant's spouse and parents would experience hardship if they were to relocate to Mexico to be reunited with the applicant. Counsel has stated that neither the applicant's spouse nor her parents have family ties outside the United States. He has presented country conditions information, regarding levels of violence in Mexico, particularly towards women. Counsel and the applicant's spouse have both stated that those country conditions when combined with economic conditions in Mexico, would cause the applicant's qualifying family members to experience hardship if they were to relocate to Mexico. The applicant's spouse has stated that it is unlikely that he would earn at the same level in Mexico that he does in the United States and that forcing him to do so would create an economic hardship for the applicant. In this case, when evidence regarding current country conditions and evidence regarding financial hardships that the applicant's spouse would endure as a result of relocating to Mexico are weighed together, the record establishes that the applicant's qualifying family members would experience extreme hardship if they were to relocate to Mexico to reside with the applicant.

However, the AAO notes that, as a United States citizen and as Legal Permanent Residents, neither the applicant's spouse nor her parents are required to reside outside of the United States as a result of denial of the applicant's waiver request. In this case, counsel states that the applicant's United States citizen spouse and Legal Permanent Resident parents will experience hardship if they remain in the United States and a waiver is not granted to the applicant. Counsel asserts that family separation; increased childcare responsibilities to the applicant's spouse; and constant worry about the applicant would cause the applicant's spouse and parents to experience extreme hardship if they were to remain in the United States separated from the applicant.

Counsel states that, though the applicant's children are not qualifying family members, the applicant's absence from them creates a hardship for her United States citizen spouse. *Brief from counsel*, undated. Counsel asserts that whether the applicant's spouse has to take care of his children by himself in the United States or if his children relocate to Mexico to be with the applicant and are therefore separated from him, he would experience hardship. *Id.* _____ further states that the applicant's spouse is experiencing hardship due to his separation from the applicant. He states that the applicant, who was the children's primary care taker, is now separated from them, which forces the applicant's spouse to entrust new people with their care. He further states that the applicant's children fear that she has abandoned them, which has become an intolerable situation and asserts that the applicant's spouse feels that his marriage is in jeopardy. *Letter from* _____ dated January 10, 2006.

The applicant's spouse states the violence towards women and girls in Mexico, when combined with the fact that his spouse, and sometimes his daughter are in Mexico causes him great stress, which contributes to his hardship. The applicant's spouse states that he feels that leaving the applicant in Mexico, which he describes as dangerous and poverty-stricken, causes him constant worry. *Affidavit of* [REDACTED] dated July 28, 2006.

As was previously noted, the record does establish that the applicant's qualifying family members would experience extreme hardship if they were to relocate to Mexico to reside with the applicant. However, the record, reviewed in its entirety with regards to counsel's claim that the applicant's qualifying family members would experience extreme hardship if they were to remain in the United States separated from the applicant in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's parents or spouse face extreme hardship if the applicant is refused admission. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The statement from the applicant's husband and the letter from [REDACTED] show that the applicant has very loving and devoted family members who are extremely concerned about the prospect of their continued separation from the applicant. *Affidavit of* [REDACTED] dated July 28, 2006; *Letter from* [REDACTED] dated January 10, 2006. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor 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 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 INA § 212(i), 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 (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). "[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).

Though the AAO is not insensitive to the difficulties experienced by individuals due to separation, the question arises as to whether the difficulties described by counsel and the evidence submitted in support of counsel's assertion that those difficulties rise to the level of extreme hardship satisfy the

applicant's burden of proof. In this case, there is not sufficient evidence in the record to establish that the difficulties the applicant's spouse and parents would experience if they remain in the United States separated from the applicant would rise to a level beyond those ordinarily associated with deportation. Because the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and her parents caused by the applicant's inadmissibility to the United States, the applicant is statutorily ineligible for relief. Therefore, 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) 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.