

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

H<sub>3</sub>

FILE:

Office: MEXICO CITY (CIUDAD JUAREZ)

Date: APR 14 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)  
of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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 District Director, Mexico City, Mexico, denied the instant waiver application. 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 native and citizen of Mexico, the spouse of a U.S. citizen, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife.

The district director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The district director also found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application.

On appeal, the applicant's wife provided additional evidence, but did not contest the district director's determination of inadmissibility. Notwithstanding that the applicant did not contest the determination that the applicant is inadmissible, the AAO will review the law and facts that led to that determination.

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

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

On the Form I-130, Petition for an Alien Relative, the applicant's wife, who signed that form on March 11, 2003, stated that the applicant entered the United States without inspection on May 21, 2002. On a G-325A, Biographic Information form, the applicant, who signed that form on December 1, 2005, stated that he had lived in Roswell, New Mexico since May 2002.

On the Form I-601, Application for Waiver of Inadmissibility, the applicant's wife, who signed that form on December 1, 2005, stated that the applicant lived in Roswell, New Mexico from May 29, 2002 until November 15, 2005. The record contains no indication that the applicant ever gained any

type of legal status in the United States. The applicant submitted the Form I-601 in Ciudad Juarez, Mexico on December 1, 2005, which indicates that he was then outside of the United States.

The evidence in the record is sufficient to show that the applicant was illegally present in the United States from May 21, 2002 to November 15, 2005, and that he has since left the United States. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

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

The Attorney General [now Secretary of Homeland Security] 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 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) of the Act 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 relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. 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 nonexclusive list of 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).

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).

The record contains an undated, handwritten statement from the applicant's wife, submitted with the Form I-601 application. In it, she stated that she loves her husband and her daughter misses him and cries as a result. The applicant's wife referred to the applicant as her daughter's "daddy." Whether the applicant is the child's father is not clear from the record, and, in any event, as was noted above, hardship to the applicant's child is not directly relevant to the availability of waiver in this matter.

The record contains a letter, submitted with the appeal, dated December 12, 2006, from [REDACTED], a medical doctor with the Roswell Medical Clinic. The body of that letter reads, in its entirety,

[The applicant's wife] was seen today. She is quite distraught and has symptoms of depression that have been increasing over the past year. She says that she misses her husband, who is in Mexico, whose immigration was recently refused.

She has been started on anti-depressant medication.

The record contains a letter, submitted with the appeal, dated December 18, 2006, from [REDACTED] of Roswell, New Mexico. Ms. [REDACTED] stated that the applicant's wife worked in housekeeping at that business from October 2005 to October 2006, when she "ceased her employment due to her inability to perform her job duties." She further stated that the applicant's wife had previously excelled at her job, but shortly after her husband was refused reentry into the United States in November 2005, she started showing "severe signs of depression," including lack of interest in her work.

asserted, yet further, that the applicant's wife complained of "hardship in taking care of her daughter, performing household chores, not sleeping well and getting up late for work," and that the applicant's wife stated that, "without the help of her husband her economic and social responsibilities seemed overwhelming." Finally, [REDACTED] stated that she is confident that the applicant's wife "could possibly recover from this dilapidated condition if she once again had the help of her husband in carrying the responsibilities and burdens that come with raising a young daughter that they share."

The letter contains an undated letter, submitted on appeal, from the applicant's wife. Although it is written in the third person, her signature indicates that the assertions in it are hers. In it, she stated that she has "suffered over and above the normal economic and social hardships as a result of the removal of [the applicant]." She further stated,

"The medical documentation states that [the applicant's wife] has and will in all probability continue to suffer from severe depression. [The applicant's wife] has with

the removal of her spouse, without his support and presence, declined into a severe state of depression, resulting in economic and social disruption.

The only evidence in the record that the AAO would characterize as medical evidence is the December 12, 2006 letter from [REDACTED]. That letter does not confirm the applicant's wife statement that she "has and will in all probability continue to suffer from severe depression." The letter does not state that the applicant's wife's symptoms were severe, nor does it offer any prognosis.

Although the input of any health professional is respected and valuable, the AAO notes that the letter submitted fails to reflect an ongoing relationship with the applicant's wife or any history of treatment for the disorder suffered by the applicant's wife, other than a single prescription for an unidentified anti-depressant medication. Moreover, the conclusions reached in that letter, apparently based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED] findings speculative and diminishing the report's value in determining extreme hardship.

The letter from the applicant's wife's former employer is reliable evidence that the applicant's wife ceased her employment at that business.

The employer did not indicate that the applicant's wife was fired from her position, but rather implies that she relinquished it voluntarily. The basis for the employer's statement that the applicant's wife left the position because she was no longer able to perform the duties is unclear, and the letter is not evidence that the applicant's spouse is currently unemployed. Further, as the Form I-601 appears to indicate that the applicant's wife lives with her parents, the record contains insufficient evidence that the applicant's departure has resulted in economic hardship to his spouse. On his G-325A, the applicant indicated that he had been unemployed in the United States since 2002. His current employment status in Mexico, and corresponding ability to financially support his spouse, is unclear.

The applicant's initial letter indicated merely that she loves her husband and wanted him to return to the United States. Her subsequent letter, written in the third person, states that the applicant's absence is the cause of her depression, and that the depression is severe. The AAO acknowledges that the applicant's spouse suffers emotional hardship in his absence, but the severity of this hardship has not been sufficiently demonstrated in the record. The applicant's letter, and the other evidence, does not demonstrate that the applicant is suffering clinical depression, or that this hardship exceeds that typically resulting from inadmissibility or removal and rises to the level of extreme hardship when combined with other hardship factors.

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 wife faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

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 affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than 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). 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 INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.