

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

H3



FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

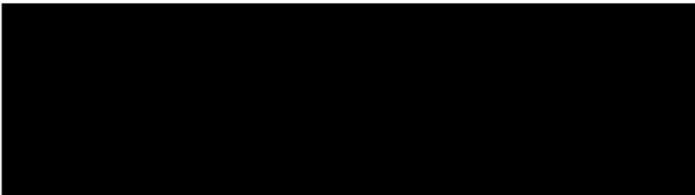
Date: JUL 07 2009

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:



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, 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 the father of a U.S. citizen son, and the beneficiary of an approved Form I-130 petition. The applicant was found to be inadmissible to the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife and son.

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, counsel submitted a brief and additional evidence.

Although counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review 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.

The applicant's wife indicated, on the Form I-130, Petition for Alien Relative, which she signed on February 13, 2003, that the applicant's last entry into the United States was accomplished without inspection.

On a Form G-325A, Biographic Information, which the applicant signed on January 4, 2006, the applicant indicated that he had lived in Compton, California from 2000 to August 2005, and in Lynwood, California, from August 2005 until the date of his signature. The applicant also stated that he had not been employed during the previous five years.

The applicant indicated, on the Form I-601, Application for Waiver of Ground of Excludability, which he signed on January 4, 2006, that he had entered without inspection during April 1999 and lived in the United States from that time until December 2005. That application was prepared by a notary in Ciudad Juarez, Chihuahua, Mexico, and the applicant submitted that application in Ciudad Juarez. In the appeal brief, counsel stated that the applicant “. . . entered the United States unlawfully from Mexico in the year 1999,” and that he had subsequently departed the United States.

The evidence in the record is sufficient to show that the applicant was unlawfully present in the United States from either 1999 or 2000 until 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 or his son is not directly 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).

In a letter dated January 24, 2006, the applicant's wife stated that she and her son would suffer extreme financial hardship if the applicant is not permitted to live in the United States. She stated that she would have to seek employment, which would necessitate paying for child care, the cost of which she stated would be prohibitive. She also indicated that the emotional and physical support the applicant provides would be the greatest loss.

In another letter in the record from the applicant's wife, dated April 19, 2007, she stated that she loves her husband and wants to be together with him to raise their son, and that she does not know whether she could raise that son as a single mother. She stated that she would suffer extreme hardship because her husband is part of her life, and that she does not want to return to Mexico.

The record also contains employment verification letters, dated April 12, 2007, indicating that, as of that date, the applicant's wife had worked for an International House of Pancakes for more than five years.

The record contains a copy of the applicant's wife's 2006 Form 1040 U.S. Individual Income Tax Return. That document shows that the applicant's wife earned \$18,126 during that year, and that she lived in Lynwood, California, with her parents and her son. The applicant's wife signed that return as head of household.

On appeal, counsel stated that the wrong standard of extreme hardship had been applied in reaching the decision denying the application for waiver. He cited *Perez v. INS*, 96 F3d 390, 392 (9<sup>th</sup> Cir. 1996) for the proposition that extreme hardship is hardship that is unusual or beyond that which would normally be expected upon deportation, and cited *Matter of Marin*, 16 I&N Dec. 581, 584 for the proposition that the AAO "must balance the adverse factors evidencing the alien's undesirability as a permanent resident with the social and Humane considerations presented on their behalf." Counsel also cited other case law pertinent to the balancing of the various factors.

The AAO notes, as it noted above, that the decision pertinent to waiver is a two-part process. The balancing of factors that counsel refers to is the second part. Before that part may be reached, the applicant must demonstrate the threshold requirement of extreme hardship.

Counsel stated that "[The applicant] was previously employed in and was his family's primary source of income," and that with the combined incomes of the applicant and his wife, the family was able to live comfortably. However, statements by the applicant's wife are the only evidence in the

record that the applicant has ever been employed in the United States. In her January 24, 2006 letter, she stated that she would suffer extreme financial hardship if he is not allowed to return to the United States. In her April 19, 2007 letter, she stated, "We both work . . ." The record contains no other indication that the applicant has ever contributed any income to his family. The applicant himself indicated, in his Form G-325, that he had not been employed during the five years prior to August 2005.

Not only is the evidence insufficient to demonstrate that, as counsel asserts, the applicant was his family's primary wage earner, it is insufficient to show that the applicant earned any wages at all. The evidence is insufficient to demonstrate that the loss of the applicant's income would constitute any hardship.

The applicant's wife stated that if the application is denied she would be obliged to seek employment. The evidence in the record, though, indicates that she has been employed since 2002 and continued to be employed on April 12, 2007.

The applicant's wife stated, in her January 24, 2006 letter, that, if the application is not approved, she would be obliged to secure child care, the price of which she characterized as prohibitive. The record contains no evidence that no affordable child care is available in the applicant's wife's area. Further, the AAO notes that, in her 2006 tax return, she indicated that both of her parents live with her. Why neither of them is available to care for her child while she works has never been addressed.

The evidence is insufficient to show that, if the waiver application is denied, it will cause the applicant's wife to suffer financial hardship which, when added to the other hardship factors, constitutes extreme hardship.

The remaining hardship factor to be considered may be called emotional hardship. In both of her letters, the applicant's wife addressed the emotional hardship that would be visited upon her in the event that the applicant is unable to return.

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 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 faces extreme hardship if the applicant’s waiver application is not granted and she remains in the United States. 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.

Further, although the applicant’s wife stated, without elaboration, that she does not want to return to Mexico, no evidence has been submitted to demonstrate that for her to return to the country of her birth could constitute hardship. The AAO is unable to find, therefore, that if the waiver application is denied and the applicant’s wife returns to Mexico to live with him, she would suffer 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.