



U.S. Citizenship
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FILE: [REDACTED]
CDJ 2004 729 817

Office: MEXICO CITY (CIUDAD JUAREZ) Date: 'JUL 07 2009

IN RE: Applicant: [REDACTED]

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

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 waiver application was denied by the District Director, Mexico City, Mexico, and 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 under 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.

The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), of the Act. The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated June 30, 2006. The applicant submitted a timely appeal.¹

On appeal, the applicant indicates that since the denial of the waiver application his wife is experiencing the hardship of raising their two-year-old daughter without him. He states that his wife is a bank teller and is trying to financially support her parents and his mother and needs financial assistance from him. The applicant conveys that his wife is taking care of her mother, who has high blood pressure. He states that his wife has had to give up her educational goals to support the family and his daughter is without a father. The applicant indicates that moving to Mexico would halt his wife's career, cause them to lose their house, and separate his wife from her parents. He indicates that his child would live in poverty in Mexico and would not have educational opportunities.

The AAO will first address the finding of inadmissibility.

Inadmissibility for unlawful presence is found under section 212(a)(9) of the Act. That section provides, in part:

(B) Aliens Unlawfully Present

(i) In general. - 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 . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

¹ The applicant appears to be represented; however the record does not contain a properly signed Form G-28, Notice of Entry of Appearance as Attorney or Representative. All representations will be considered but the decision will be furnished only to the applicant.

(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.

Unlawful presence accrues when an alien remains in the United States after period of stay authorized by the Attorney General has expired or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.²

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* Memo, note 1. In addition, an alien whose unlawful status begins before his or her 18th birthday does not begin to accrue unlawful presence for purposes of section 212(a)(9)(B) of the Act until the day after his or her 18th birthday. *See* Memo, note 1.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in 1989, remaining illegally until October 2005. The applicant accrued seven years of unlawful presence, from January 18, 1998, the day after he turned 18 years old, until October 2005, and triggered the ten-year-bar when he departed the United States, rendering him inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The waiver for unlawful presence is found under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). That section reads:

(v) Waiver. – The Attorney General [now Secretary, 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 waiver 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

² Memorandum by Lori Scialabba, Assoc. Director, Refugee, Asylum and International Operations Directorate and Pearl Chang, Acting Chief, Office of Policy and Strategy, Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act; AFM Update AD 08-03; May 6, 2009.

resident spouse or parent of the applicant. Hardship to an applicant and to his or her child is not a consideration under sections 212(a)(9)(B)(v) and 212(i) of the Act, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(a)(9)(B)(v) of the Act, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse. Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). *Matter of Cervantes-Gonzalez* lists the factors considered relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors relate to an applicant's qualifying relative and 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. *Id.* at 565-566.

The factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The trier of fact considers the entire range of hardship factors in their totality and then determines "whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994))

In addition to other documents, the record contains employment records, financial documents, birth certificates, a marriage certificate, and letters.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's qualifying relative must be established in the event that if she or he joins the applicant to live in Mexico, and alternatively, if she or he remains in the United States without him. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The applicant indicates that his spouse will experience financial hardship if he remains in Mexico. The applicant's spouse states in a letter dated October 28, 2005, that if her husband stays in Mexico she will not be able to afford her monthly expenses, which now include a babysitter. She indicates that her husband has a job offer in the United States. This is reflected in a letter by Central Air Conditioning, Inc. in the record. Contained in the record are wage statements reflecting the applicant's wife's gross bi-weekly earnings ranged from \$938 - 1,169, with the higher figure reflecting overtime. Monthly expenses are listed by the applicant's wife; however, \$345 for the Department of Motor Vehicle renewal tags would seem to be an incorrect figure as this would apparently be a yearly rather than monthly expenditure. Based on the invoices in the record, the AAO calculates that the applicant's wife

spends approximately \$1,643 on monthly obligations. After babysitting, groceries, clothing, car maintenance and fuel, and medical bills are added to that figure the monthly total is approximately \$2,550. The after-tax income of the applicant's spouse is not adequate to meet her monthly financial expenses. As a consequence of this, the AAO finds that the applicant's spouse would experience extreme financial hardship if she were to remain in the United States without her husband.

The applicant's husband indicates that his wife's career and educational goals would end and she would lose her house if she moved to Mexico. He states that his wife financially supports her parents and his mother, and that she takes care of her mother, who has high blood pressure. He states that in Mexico his wife and daughter would be impoverished and his child would have no educational opportunities.

Difficulty in finding employment and inability to find employment in one's trade or profession and loss of a family business and home were not sufficient to justify relief in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). Furthermore, courts have routinely held that a lower standard of living in an alien's homeland is not sufficient to constitute extreme hardship. *See, e.g., Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), (a lower standard of living in Mexico and the difficulties of readjustment to that culture and environment were found not sufficient to establish extreme hardship); *Bueno-Carrillo v. Landon*, 682 F.2d 143 (7th Cir. 1982) (lower standard of living which the petitioner and his daughter would face in Mexico is not extreme hardship). Regarding separation from family members in the United States, in *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families. There is no evidence in the record demonstrating that the applicant's spouse provides financial support to her parents or to the applicant's mother, nor is there any documentation of the medical condition of the applicant's mother-in-law or that there are no other relatives who could provide assistance. The record presented here, considered collectively, fails to establish extreme hardship to the applicant's spouse if she were to join him to live in Mexico.

In the final analysis, it is concluded that the factors presented in this case do not constitute extreme hardship to a qualifying family member for purposes of relief 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 relief, no purpose would be served in discussing whether he 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 remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.