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FILE:

CDJ 2004 780 049

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act, 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 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, [REDACTED] is a native and citizen of Mexico. He 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 admission within 10 years of his last departure from the United States. The applicant 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), in order to return to the United States to join his United States citizen spouse, [REDACTED]

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601), accordingly.

On appeal, counsel asserts that the applicant's spouse is receiving medical treatment for depression and anxiety. Counsel contends that the applicant's spouse is dealing with the struggles of parenthood without the applicant. Counsel indicates that the applicant's daughter continues to receive medical attention for asthma. Counsel states that the applicant's spouse is dealing with her parent's illnesses. Counsel furnished as corroborating evidence medical documents, attestations from family members, an employer letter, family photographs, and attestations from friends and family members regarding the applicant's character. The entire record was reviewed and considered in rendering this decision.

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.

In the present application, the record reflects that the applicant entered the United States from Mexico without inspection in February 2000. The applicant resided in the United States until he voluntarily departed to Mexico in October 2005. Consequently, the applicant accrued unlawful presence for a period of over five years prior to his departure from the United States. The applicant is seeking admission within ten years of his October 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 alien himself 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).

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 (BIA) 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 United States 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record reflects that the applicant wed [REDACTED], a U.S. citizen, on November 14, 2003. [REDACTED] is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme

hardship purposes. The applicant and his spouse have a four-year old U.S. citizen child, [REDACTED]. The record indicates that the applicant and his spouse have another child; however no documentation has been provided in relation to the age and identity of the younger child. Hardship to the applicant's older child, [REDACTED] will be considered insofar as it results in hardship to his spouse.

On appeal, counsel asserts that the applicant's spouse is receiving medical treatment for depression and anxiety. Counsel contends that the applicant's spouse is dealing with the struggles of parenthood without the applicant. Counsel indicates that the applicant's daughter continues to receive medical attention for asthma. Counsel states that the applicant's spouse is dealing with her parent's illnesses.

The record reflects that counsel recently filed additional documents in support of the appeal. The documents include a letter from the applicant's spouse, dated April 29, 2008. The applicant's spouse asserts in this letter that she was recently diagnosed with scoliosis. She indicates that she cannot pick up anything heavy because of this condition. Counsel furnished a letter from [REDACTED] dated February 21, 2008, as corroborating evidence. [REDACTED]'s letter states that the applicant's spouse suffers from scoliosis and cannot lift above 10 pounds. It states that she cannot perform her daily duties and is in need of help from the applicant. The applicant's spouse asserts in her previous letter, filed on appeal, that she suffers from anxiety and depression. This letter, dated September 7, 2006, provides that she is taking Xanax for anxiety. As corroborating evidence, counsel furnished two letters from Med-Pro Family Clinic, dated November 14, 2005 and August 3, 2006. The letters state that the applicant's spouse has been diagnosed with depression/anxiety and has been granted medical leave. Counsel also furnished a letter, dated November 11, 2005, from [REDACTED], providing that the applicant's spouse is in a state of mental depression because of the applicant's immigration case. Counsel provided copies of the applicant's spouse's prescription for Xanax and Motrin, a Xanax prescription label, dated August 17, 2006, and information from the internet (medicinenet.com) on the use of Xanax.

The AAO has reviewed the medical evidence and finds that the applicant's spouse has not demonstrated how Scoliosis affects her daily activities of life. Moreover, there is no documentation in the record related to the severity of the Scoliosis, her short and long term treatment plans, and prognosis for her recovery. While the AAO acknowledges that Xanax is a drug for treatment of anxiety, the record fails to reflect any type of assessment or evaluation of the applicant's mental health by a licensed mental health professional. There is no documentation in the record related to the applicant's diagnosis, prognosis, and treatment plan for depression. Further, there is no documentation in the record that would serve to link the applicant's depression and insomnia to her separation from the applicant. The record does not reflect that the diagnosis of depression has been made with the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the finding speculative. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). For these reasons, the AAO cannot conclude that the applicant's spouse has a medical condition that would contribute to a finding of extreme hardship.

The applicant's spouse asserts in her letter, dated September 7, 2006, that her older daughter has asthma which has turned into bronchiolitis. She states that her daughter wakes up in the middle of the night coughing and weezing and she must give her albuterol and pulmicort respule nebulizations. She states that this occurs every two to three days. She indicates that if the applicant was in the United States, he would be strong and care for their daughter. She notes that her daughter had to go to the hospital for a week for surgery because of methicillin-resistant staphylococcal aureus abscess of the right groin. As corroborating evidence, counsel furnished a letter, dated August 3, 2006, from [REDACTED] which provides the applicant's older daughter was hospitalized on July 10, 2006 for one week because of methicillin-resistant staphylococcal aureus abscess of the right groin. The letter further states that the applicant's daughter has recurrent attacks of asthma that is controlled with albuterol and pulmicort respule nebulizations. Counsel furnished various progress reports related to the applicant's daughter's medical condition/illnesses. The AAO notes that since the majority of the information on these progress reports is illegible, they are without any significant probative value in these proceedings. Counsel provided information from the internet (medicinenet.com) on methicillin-resistant staphylococcal aureus, albuterol, and pulmicort turbuhaler and respules.

As stated previously, hardship to the applicant's older child will be considered insofar as it results in hardship to his spouse. In regard to the applicant's child's surgery for methicillin-resistant staphylococcal aureus (MRSA), it appears from the record that she was successfully treated for this infection. There is no indication that the applicant's child continues to suffer from a MRSA or has ongoing complications as a result of having suffered from MRSA. Further, in regard to the applicant's child's asthma, the record reflects that she receives medical treatment to control the asthma, and the applicant's spouse is capable of administering the treatment. The record does not indicate how the applicant's absence from the United States has exacerbated this condition. The AAO finds that the difficulties the applicant's spouse is enduring as a result of raising children while separated from the applicant are the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The AAO recognizes that the applicant's spouse is suffering emotionally as a result of her separation from the applicant. Her situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. 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 exists. 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 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). 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 applicant’s spouse asserts in her letter, dated September 7, 2006, that her mother had a total abdominal hysterectomy. She states that during this time, the applicant was supportive of her family and took care of their daughter, while she took care of her mother. She notes that her mother stopped working after her hysterectomy in September 2005 and her father does not regularly work because of chronic ulcers. She indicates that the applicant became the main financial provider for her entire family. She states that when the applicant departed the United States, she had to find employment to provide for her family. The applicant’s spouse states in her recently furnished letter, dated April 29, 2008, that her father is ill with kidney problems. Counsel furnished a letter from the applicant’s mother-in-law, dated August 17, 2006. The applicant’s mother-in-law states in the letter that her daughter took care of her after her surgery. She also notes that the applicant helped her and her husband financially because they can not work due to their health conditions. As corroborating evidence, counsel furnished a copy of the agreement for the applicant’s mother-in-law’s to consent to a total abdominal hysterectomy. The record does not contain any other medical documentation related to the medical conditions of the applicant’s mother-in-law and father-in-law.

The AAO will consider financial hardship as one factor in establishing extreme hardship. However, in the present case, sufficient documentation has not been provided to demonstrate the applicant’s spouse’s financial situation. The AAO notes that the applicant’s spouse’s assertion that when the applicant departed the United States, she had to find employment to provide for her parents is inconsistent with a letter she previously submitted. Her previous letter, dated November 15, 2005, states that after the applicant departed, she became financially dependent on her parents. The AAO notes further that the only financial documentation provided in the present case is an affidavit, dated August 8, 2006, from the applicant’s former employer, [REDACTED] stating that he has a position for the applicant to commence employment as an assembler and machine operator. No other documentation has been provided to show the applicant’s spouse’s annual income and expenses and her assets and liabilities. As previously stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Although the applicant’s spouse’s unsupported assertions are relevant and have been considered, they can be afforded little weight in the absence of supporting evidence.

Finally, the applicant has not demonstrated that his spouse would suffer extreme hardship if she accompanied him to Mexico. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as 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’s spouse has failed to describe any hurdles she and her children may suffer if she accompanied the applicant to Mexico. Specifically, she has not described any cultural or linguistic hurdles she and her children may encounter should they move to Mexico. Nor has she discussed any financial hurdles, such as finding employment

and housing in Mexico. There is no indication in the record of where the applicant is currently residing in Mexico and his source of financial support. Further, there is no discussion of the availability and standard of health care in Mexico. Moreover, there is no indication of the hardship that would result from the loss of family and community ties in the United States. The AAO observes that the applicant's marriage certificate reflects that his spouse's parents are from Mexico, indicating that she is likely familiar with the Mexican culture, and could possibly have extended family living in the country.

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife faces extreme hardship if the applicant is refused admission to the United States. 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.